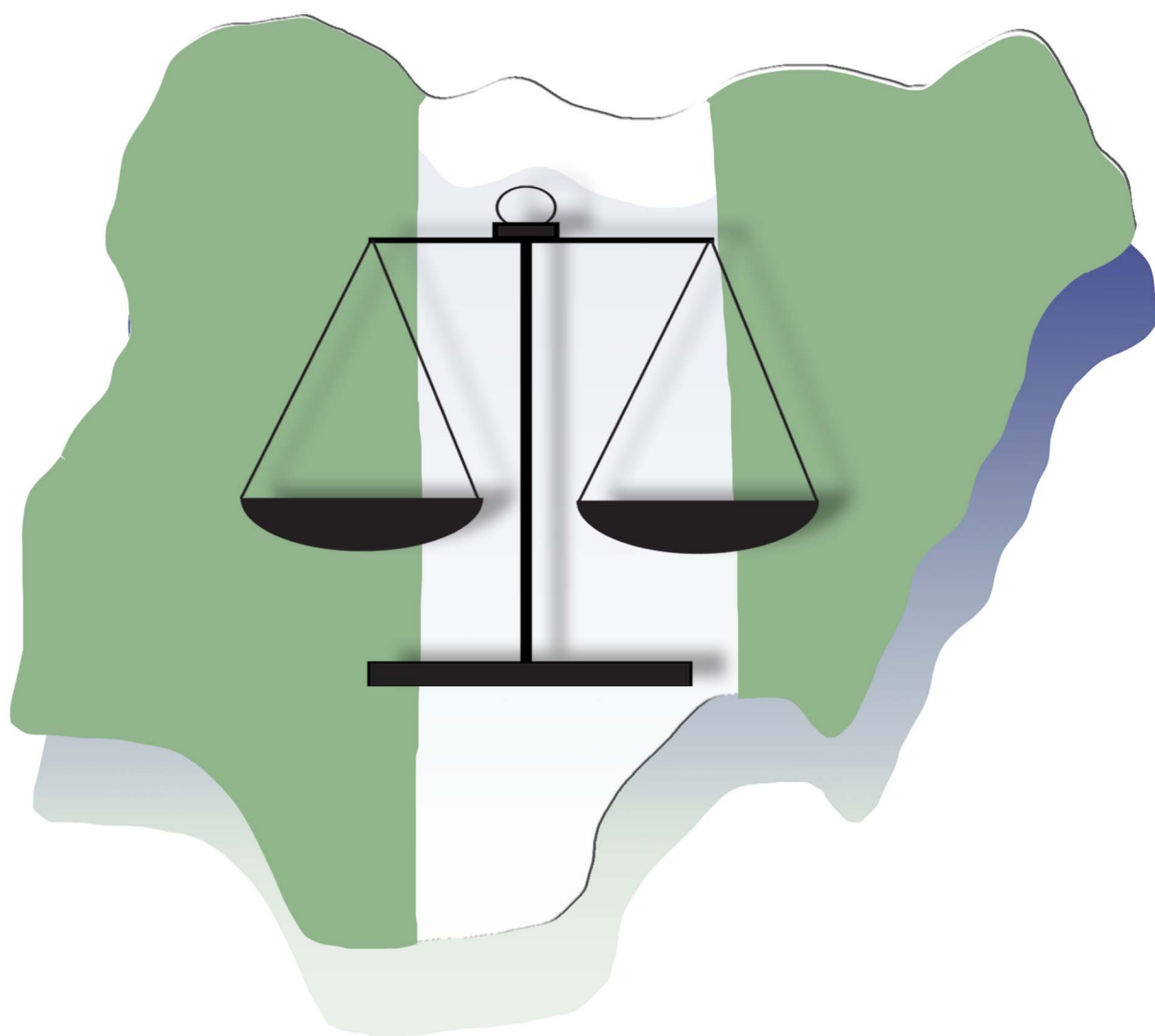


Strengthening Judicial Integrity and Capacity in Nigeria



Report of the First Federal Integrity Meeting for Nigerian Chief Judges

Abuja, 26 & 27 October 2001



UNITED NATIONS
Office on Drugs and Crime



Supreme Court of Nigeria &
Independent Corrupt Practices and
Other Related Offences Commission

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FOREWORD

It gives me very great pleasure to express my personal support for this major and important initiative being taken by the Chief Justice of the Federation.

The Rule of Law stands as a vital underpinning for our society. By upholding the Rule of Law, our judiciary acts in the interests of all Nigerians, securing their personal safety and freedoms and safeguarding the integrity of the nation.

At the head of our judiciary stands the Chief justice of the Federation. To discharge these heavy responsibilities, he and his judges must be – and are fully - independent of the executive. No one is more conscious of this than I am.

He and his judges will know that my administration strives to respect their independence and to comply with their judgments whenever this is called for.

I can assure the Chief justice and the Chief Judges of the States that I will do everything I can to support their endeavours to raise the quality of the justice afforded to our fellow citizens.

Olusegun Obasanjo
President and Commander-in-Chief
Federal Republic of Nigeria
December 2001

OVERVIEW

By

Hon Chief Justice Uwais, Chief Justice of the Federation

The First Federal Integrity meeting on Strengthening Judicial Integrity and Capacity in Nigeria was held in Abuja from 26-27 October, 2001¹. The meeting was attended by Chief Judges² from each of the 36 States, and the debate and application shown by all the participants was of the highest order.

Knowing each of the Judges personally as I do, it came as no surprise to me that they should have been so assiduous in their duties and so diligent in their dedication to improving the access and quality of the judicial services provided to Nigerians throughout our land, and to those who come to live with us or to participate in our economic life. At the same time, it would be remiss of me not to record this for the benefit of those unable to be present.

Nor was I surprised at the high level of concern participants demonstrates, particularly for those consigned to prison for no other reason than being unable to pay a modest fine and for those unfortunate casualties of system that does not always perform as it should, prisoners awaiting trial but held in prison.

It offends our individual and collective sense of justice that the poor should be penalised in this way, and the overwhelming conviction of the meeting was that a power to impose suspended prison sentences must be introduced by the National Assembly. This will empower the courts, in circumstances where a convicted person is unable to pay a fine, to impose a penalty, which is appropriate but not tantamount to punishment for experiencing poverty.

Those not with us should learn, too, of the efforts Chief Judges are making to visit prisons with human rights NGOs and others to expedite the hearings for cases where prisoners are awaiting trial, and to facilitate the granting of bail where this is appropriate.

Origins of the initiative

As my fellow justices can confirm, I have long been deeply concerned about the state of our judiciary and anxious to do whatever I can to improve the quality of legal services we offer the public. Against this background, the inspiration for our meeting came from my involvement, as Chief Justice of the Federation, in a small Judicial Leadership Group on Judicial Integrity, that has met twice to date, initially in Vienna, Austria on April 9-10 2000, and again in Bangalore, India on February 20-22, 2001. At Bangalore three of us, I myself, and my brother Chief Justices from Uganda and Sri Lanka, expressed our wish to proceed along the lines suggested by our deliberations there. In this way, initiatives are now starting in all three countries, in the source of which we will share our experience and the lessons we learn both with each of the other two and, more widely, with the other members of the

¹ The proceedings had the benefit of contributions from the Hon. Attorney General and Minister of Justice Chief Bola Ige and the Hon. Justice M.M.A. Akanbi Chairman of the Independent Corrupt Practices and Other Related Offences Commission

We were also grateful for the participation and support of UN's Centre for International Crime Prevention (CICP) in Vienna represented by Petter Langseth, Edgardo Buscaglia and Oliver Stolpe, ODCCP's Lagos Office represented by Paul Salay and Transparency International (TI) represented by Jeremy Pope. Both have been involved in facilitating the work of the Judicial Leadership Group.

² See attachment I, Participant List

Leadership Group. I am looking forward to welcoming members of the Leadership Group to Abuja during the second quarter of year 2002, when we will all review the progress being made to date.

As well, in Bangalore we worked over a period of three days to produce a draft Global Code of Conduct for the Judiciary.² This is a document which has been extremely well received as it continues to be circulated around the Commonwealth and the wider world, and it is one from which, I believe, we ourselves in Nigeria can benefit by reviewing our own Code of Conduct against its provisions.

The way forward in Nigeria

In carrying out our project in Nigeria, I envisaged this gathering as marking the start of a process that will develop survey instruments that will be applied to three courts in each of three pilot states (Lagos, Delta and Borno). Comprehensive Assessment and Integrity and Action Planning Workshops will take place in each of these courts during the first quarter of year 2002, involving a full range of stakeholders (i.e. those who are involved with the courts in one way or another, including police, prisons, the Bar, human rights NGOs, etc.). These Integrity and Action Planning Workshops will consider and interpret the results of the comprehensive assessments for their court and develop action programmes informed by the findings. These programmes will be implemented over the succeeding twelve months or so, after which further surveys will be conducted to measure the impact of the reforms.

Further national workshops will be held to assess the progress being made and to ensure that all states are in a position to share in the lessons being learned. I also expect the Chief judges, both in the designated pilot states and of other states not to await the results of the full programme, but to press ahead with their own reform programmes as lessons are learned as we progress through the project's cycle. Indeed, there were clear messages identifying needed actions that came out of our first gathering, and I have attempted to draw these together at the conclusion of this introduction.

The First Judicial Integrity Meeting

Our meeting addressed the challenges we face as the leaders of judicial administrations in ensuring that standards of performance are raised to a level where the public has total confidence in the judiciary as an institution and in judges in particular.

We identified four broad headings under which we must address our tasks –

- 1.Improving Access to Justice;
- 2.Improving the Quality of Justice;
- 3.Raising the Level of Public Confidence in the Judicial Process; and
- 4.Improving our efficiency and effectiveness in responding to public complaints about the judicial process

Having done so we then identified the ways in which we, ourselves, would wish to be judged – or “measured” as a technician would say.

This involved our brainstorming intensively about what the “indicators” should be that we would like to see applied to measure the impact of our work, bearing in mind that these had to be matters over which we had a measure of control, and they also had to be actions which could impact favourably on the judicial process.

Follow-up action identified in the course of the Workshop

1. Access to justice

- Code of conduct reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately.
- Consider how the Judicial Code of Conduct can be made more widely available to the public.
- Consider how best Chief Judges can become involved in enhancing the public's understandings of basic rights and freedoms, particularly through the media.
- Court fees to be reviewed to ensure that they are both appropriate and affordable
- Review the adequacy of waiting rooms etc. for witnesses etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose.
- Review the number of itinerant Judges with the capacity to adjudge cases away from the court centre
- Review arrangements in their courts to ensure that they offer basic information to the public on bail-related matters.
- Press for empowerment of the court to impose suspended sentences and updated fine levels

2. Quality of Justice

- Ensure high levels of cooperation between the various agencies responsible for court matters (police; prosecutors; prisons)
- Criminal Justice and other court user committees to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations
- Old outstanding cases to be given priority and regular decongestion exercises undertaken.
- Adjournment requests to be dealt with as more serious matters and granted less frequently.
- Review of procedural rules to be undertaken to eliminate provisions with potential for abuse.
- Courts at all levels to commence sittings on time. Increased consultations between judiciary and the bar to eliminate delay and increase efficiency.
- Review and if necessary increase the number of Judges practising case management.
- Ensure regular prison visits undertaken together with human rights NGOs and other stakeholders
- Clarify jurisdiction of lower courts to grant bail (e.g. in capital cases).

- Review and ensure the adequacy of the number of court inspections.
- Review and ensure the adequacy of the number of files called up under powers of review.
- Examine ways in which the availability of accurate criminal records can be made available at the time of sentencing
- Develop Sentencing Guidelines (based on the United States' model).
- Monitor cases where ex parte injunctions are granted, where judgments are delivered in chambers, and where proceedings are conducted improperly in the absence of the parties to check against abuse.
- Ensure that vacation Judges only hear urgent cases by reviewing the lists and files.

3. Public Confidence in the Courts

- Introduce random inspections of courts by the ICPC.,
- Conduct periodic independent surveys to assess level of confidence among lawyers, judges, litigants, court administrators, police, general public, prisoners and court users
- Strengthen the policies and initiatives to improve the contact between the judiciary and the executive
- Increase the involvement of civil society in Court User Committees

4. Improving our efficiency and effectiveness in responding to public complaints about the judicial process

- Systematic registration of complaints at the federal, state and court level
- Increase public awareness regarding public complaints mechanisms
- Strengthening the efficiency and effectiveness of the public complaints

CHALLENGES

BY

THE HONORABLE JUSTICE M.M.A. AKANBI

Chairman of the Independent Corrupt Practices and Other Related Offences
Commission

Strengthening the institutional mechanism for enhancing judicial integrity, fostering greater access to the Courts and improvements in the quality of justice delivered in Nigeria are moves in the right direction. There is no better time than now to strive for a healthy, stable, economically buoyant and corruption-free Nigeria. This major challenge confronts us as a result of the massive and pervasive corruption which plagued Nigeria over two decades during which time the international community regarded Nigeria as a pariah nation lacking in honour and self-respect.

The Corruption Perception Index of Transparency International early this year ranked Nigeria as the most corrupt nation in the world--sad reflection of the level to which the country descended over the years. We need to think the situation with which we are challenged, create an anti-corruption culture and therefore acculturate the leadership, the government rank-and-file, private, government and public enterprise and the citizenry in this way. We need a change of heart, attitude, and practice, for all, and, in particular, for those purveyors, harbingers and perpetrators of the heinous crime of corruption who led the country to the brink of economic collapse and societal degeneration via corruption. The personal and professional challenge for me is to provide the leadership, vision, know-how and way to make the country corruption free, and, afford the country the opportunities and benefits of that process. We need strong, effective, decisive and measurably discernible reformatory action in this regard. With the help of concerned partners in the international community, including those in the UN Global Programme against Corruption, we can and we are making this happen. I ask all those in a position of authority to take the right decisions toward that end better end for the sake of Nigeria and the world as a whole.

Even to the uninitiated corruption causes severe harm to the life of the nation-state and that is why eradicating it, building a clean, transparent society, rests squarely on all our shoulders. Corruption stunts growth and development; it makes the fair distribution of wealth impossible. It has succeeded in putting money into the pocket of plunderers of national wealth and resources. It denies government legitimate tax earning and revenue from other legitimate sources. All this should be used in building a vibrant and self-sustaining economy. Corruption undermines democracy by contributing to social disintegration and distorting economic system.³ Corruption is antithesis of development, progress, and advancement. It is the *font et origo* of modern-day criminality.

Corruption manifests itself in the absence of transparency and accountability in governance, in the lack of good governance. It is the exercise of the discretionary powers of a person invested with power or authority to take decision relating to some other person or body. Much of this has to do with the weakness of a system and the operative law from which unchecked, arbitrary, power and authority, and poor governance are derived. It also has to do with cultural mores, the stability of the political, the socio-economic status and quality of life of the citizenry.

³N. Linton, Transparency International.

Strong, effective law, strong, effective, fair enforcement of law and swift and proportionate punishment are pre-requisites to any anti-corruption effort. Clarity for all regarding the law, its violation and the certainty of punishment for violation are central to anti-corruption effort that aim at prevention and deterrence as well as control. The criminal justice system must be made to operate across agencies in a consistent way in this regard. The type of reform required in criminal justice processes and procedures, integrative of human rights elements, in making the system work to outlaw a particular type of crime with some urgency, cannot be underestimated.

Both the irony and the challenge for anti-corruption leadership have to do with the fact that corruption somehow becomes acceptable. In fact, for many, it becomes a way of life. While corruption can be endemic, it is still amenable to treatment and cure. Those who profit from corruption will have to learn to live with the cure instead of the highly infectious disease.

Worthy of note in this respect are the exemplary efforts and achievements in anti-corruption reform in Hong Kong and Singapore, both having shifted quickly from being corrupt to clean.

Just when corrupt individuals were having a field day in Nigeria, we promulgated an Independent Corrupt Practices and Other Related Offences Act 2000 and indeed the establishment of the Commission, inaugurated on 29 September 2000.⁴

Nigeria has declared a war against corruption and is bent on its eradication. Its new Commission, since its inception, has been aggressively pursuing a series of activities to sensitize, educate and enlighten the public on the evils of corruption. Workshops, seminars, conferences, retreats and symposia have been organized at different places and different levels of operations, alone or in collaboration with other concerned institutions.

Programmes have also been organized on ethics and morality, and Ministries and Government departments are encouraged to set up anti-corruption monitoring units and broad-based coalitions have been formed with institutions that have joined in partnership in the Nigerian war against corruption.

Independence

The Act establishing the Commission empowers the Commission to operate as an independent body. The Commission is not subject to the control or authority of any other body.

Judicial Integrity

Judicial integrity is of paramount importance in any discussion relating to anti-corruption. The judiciary has the final say in these matters. The Judiciary is a crucial player in anti-corruption war and Judges must act well their part. The Commission has a stake in the preservation of the integrity of the Judiciary and thus judicial integrity project is most welcome, as it would have the effect of promoting the integrity of its members.

⁴Where there are reasonable grounds for suspecting a person of conspiring or attempting to commit or having committed an offence under this Act or other relevant anti-corruption law, the Commission is charged with the following duties which have to do with enforcement, investigation, prosecution and prevention:(a) receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases to prosecute the offenders;(b) examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;(c) instruct, advise and assist any officer, agency on ways fraud or corruption may be eliminated or minimized by such officer, agency; (d) advise heads of public bodies of changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;(e)educate the public on and against bribery, corruption and related offences; and (f) enlist and foster public support in combating corruption.

The Act creating the Commission, confers on the judiciary extensive powers. It gives Chief Judges power to appoint designated Judges to hear and determine cases relating to offences committed under the Act. If the Judges appointed are individuals of integrity they share the credit with the Judges you have appointed. If they are corrupt or lacking in integrity, whether they are found out or not, those making the appointments share in the blame. The Commission has no means of knowing who amongst them is corrupt and can only presume that all those recommended possess the requisite integrity.

It Act gives the right of appeal from the decision of designated Judges to the Court of Appeal and from there to the Supreme Court. This is in keeping with the rule of law. Judges are appointed to deal with cases under the Act, and, the under-pinning philosophy is to encourage Judges to give expeditious hearing to anti-corruption cases.

Speedy hearings in corruption cases are dictated by experiences of the past where delay has resulted in the accused person getting away unpunished, witnesses suddenly disappearing, etc. Hearing corruption case expeditiously does not detract from judicial independence. Delay in hearing such cases or frequent adjournments or shying away from taking decision, or passing the buck from one court to the other may send the wrong signals and does not fare well for the image of the judiciary.

At the appellate Court level, there is no time frame for hearing appeals or applications, and as such there is the fear that at that level, hearing may be delayed and the purpose of having designated Judges to speed up hearing may be defeated. Both the courts of first instance and at the appellate court level, corruption cases should be given priority of attention. There is the need to assure Nigerians that with corruption, it is no longer going to be business as usual.

STEPS FORWARD

Launching of Pilot Projects to Strengthen Judicial Integrity and Capacity in three states and 9 pilot Courts

1. In accordance with the discussion undertaken during the First Federal Integrity Meeting in Abuja on 26 – 27 October, this note has been prepared to outline the necessary steps to implement the pilot projects.
2. A preliminary mission will visit the state on dates to be agreed in January, 2002 (the tentative dates for Lagos State January 10-11, Borno State 14-15 January; and Delta State from 19 – 20 December).
3. The mission will comprise members of the Nigerian Institute of Advanced Legal Studies (NIALS), Independent Commission of Prevention of Corruption (ICPS) and the UN (about 6 in all).
4. The purpose will be to define and agree on the ‘comprehensive assessment’s framework’ to be applied to three courts in each state. This assessment will include face-to-face interviews, collection of factual information, and focus groups with judges, court staff, lawyers, court users (including under-trial prisoners) and the general public, institutional assessment and desk review of existing court information.
5. During the mission the following meetings will be held:
 - ♦ Meeting with Chief Judge to discuss the programme
 - ♦ Meeting with Judges and staff of the three pilot courts to brief them on the programme
 - ♦ Visits to the three pilot courts
 - ♦ Meeting with a group of court users (police, prisons, prosecutors, lawyers, court administrators, local business, media and civil society)
6. The ODCCP Office in Lagos will be in touch with your office to set up the necessary modalities for the programme of meetings.
7. To broaden the experience gained from the pilot programme, each state will select representative pilot courts with different jurisdiction (High Court, Magistrate Court and Area/Customary Court).

Next steps after the initial visit to the pilot states in December 2001:

- ♦ The surveys themselves are scheduled to be carried within three months starting on December 1. (Survey workers will take upwards of three weeks gathering information) i.e. by March 2002.
- ♦ The data will be processed and should be ready for the holding of three separate pilot State Integrity Meeting, one in each pilot state, by the end of March/early April 2002. The Chief Judges of the pilot states will wish to extend an invitation to the Chief Justice of the Federation. The Chairman of the ICPC has expressed an interest in attending the meeting personally. Other participants at the State Integrity Meeting would include, key personnel from the three pilot courts, prosecutors, lawyers, prison staff, court users, media legislators and the civil society. Assisting in the facilitation of the meeting will be NILS, ICPC, Transparency International and UN staff.
- ♦ The three state integrity meetings will determine the action plan for the 9 pilot courts, and implementation of the plans will commence in April/May 2002.

- ◆ There may be an Africa-wide meeting of Chief Justices held in Abuja in about March, 2002, which would provide an opportunity for the programme and the progress in implementation to be presented to representatives from across the continent. This is presently for discussion with the organisers.
- ◆ The action plan will be provided to the Chief Justice of the Federation to be part of a presentation on the programme to be made before a second international gathering, one of Chief Justices from common law countries (the Chief Justices' Leadership Group) to share best practice in promoting judicial integrity, which will be held by mid-2002. The Nigerian programme is being conducted in parallel with similar initiatives in both Uganda, South Africa and Sri Lanka. The results of their pilot programmes will also be shared at the same meeting.
- ◆ A follow-up survey to assess the success of the action plan and the effectiveness of the implemented reform will be carried out in January 2003.
- ◆ This evaluation will be assessed at three State Integrity Meetings by March 2003 (to which a broad section of stakeholders will be invited). At this meeting the action plan will be revised and updated based on the assessment.
- ◆ The final results and impact assessment will be presented before the Chief Judges at a Second Federal Integrity Meeting in the second half of 2003 (following up the recently concluded meeting in Abuja Oct 26-27 2001). Thereafter the results of the pilot exercises will be driven out across the whole country.

I. STRENGTHENING JUDICIAL INTEGRITY

A. Report of the Judicial Group Strengthening Judicial Integrity: Record of the First Meeting

1. Introduction

1.1 Context

Under the Framework of the Global Programme Against Corruption and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna, Austria in April 2000, the United Nations Centre for International Crime Prevention (CICP), in collaboration with Transparency International convened a two day workshop for Chief Justices and other senior judges from eight Asian and African countries. The workshop took place in Vienna on 15 and 16 April 2000. The purpose of the workshop was to consider means of strengthening judicial institutions and procedures as part of strengthening the national integrity systems in the participating countries and beyond. The object was to consider the design of a pilot project for judicial and enforcement reform to be implemented in relevant countries. The purpose was also to provide a basis for discussion at subsequent meetings of the Group and at other meetings of members of the judiciary from other countries, stimulated by the initiatives taken by the Group.

1.2 Membership

The Group was chaired by HE Judge Christopher Weeramantry (former Vice-President of the International Court of Justice). The participants were: Chief Justice Latifur Rahman (Bangladesh); Chief Justice Y Bhaskar Rao (Karnataka State, India); Chief Justice M L Uwais (Nigeria); The Hon F L Nyallali (former Chief Justice of Tanzania); Justice B J Odoki (Chairman of the Judicial Service Commission of Uganda); Justice Pius Langa (Vice-President of the Constitutional Court of South Africa); and Justice Govind Bahadur Shrestha (Nepal). Apologies were received from Chief Justice Sarath Silva (Sri Lanka). The rapporteurs of the Group were Justice Michael Kirby (Judge of the High Court of Australia) and Dr G di Gennaro (former President of the Supreme Court of Italy). Observers attending the meeting included Dato' Param Kumaraswamy (Malaysia: UN Special Rapporteur on the Independence of Judges and Lawyers); Mr B Ngcuka (DPP, South Africa); Dr E Markel (International Association of Judges, Austria); and Judge R Winter (Austria). The co-ordinators of the meeting were Dr Nihal Jayawickrama and Mr Jeremy Pope (Transparency International, London), and Dr Petter Langseth (CICP, United Nations).

1.3 Introduction

An address of welcome was delivered by Professor Pino Arlacchi (Under Secretary- General and Executive Director of the United Nations Office for Drug Control and Crime Prevention, Vienna). He emphasized the importance for the rule of law and for social and economic development of strengthening integrity in the judiciary of every country. In some parts of the world, extensive levels of corruption existed in the judiciary. It was therefore important to assist in the establishment of accountability and integrity so that judicial officers who were corrupt could be identified and removed from office and judicial officers of integrity could be supported. The role of the United Nations as a facilitator was emphasized. The difficulties of the project were not under-estimated. The initiative of Transparency International, and its work, was acknowledged.

1.4 The Opening Statement

The opening statement of the workshop was delivered by Mr Jan van Dijk (Officer-in-Charge of the Centre for International Crime Prevention in the United Nations Office for Drug Control and Crime Prevention, Vienna). Mr van Dijk outlined the initiatives of the Global Programme Against Corruption. He emphasised that the participating judges were chosen in their personal capacity. The involvement of judges in the Group and subsequent activities of the Global Programme did not indicate a conclusion or suggestion that any of the countries in which they served was specially affected by problems of judicial integrity. Instead, the participation of judges from a number of countries would ensure consideration of a wide range of difficulties and solutions. The proceedings would be managed and controlled by the participating judges. The delicate task of ensuring accountability of judicial officers in a context of upholding judicial independence was fully recognised by all involved.

1.5 Activities of the Global Programme Against Corruption

Dr Petter Langseth outlined the activities of the Global Programme Against Corruption. He instanced initiatives taken in a number of countries to combat corruption in the judiciary. He explained the studies undertaken in connection with the Programme, including national country assessments. He outlined the possible role of the United Nations and international and regional organisations in helping countries to strengthen judicial integrity. He explained the possible future activities of similar judicial groups involving other countries with differing judicial traditions, including in Latin America, Eastern Europe and the countries of the former Soviet Union. Such activities would build on the initiatives of the present Group, drawn from countries sharing the judicial traditions of the common law.

1.6 The Judicial Integrity Programme of Transparency International

Dr Nihal Jayawickrama outlined the Judicial Integrity Programme of Transparency International. He described the inter-governmental initiatives that had been taken both within the United Nations and elsewhere, relevant to strengthening judicial integrity. These include the adoption in 1975 by the General Assembly of the United Nations of the UN Declaration Against Corruption and Bribery in International Commercial Transactions (Resolution 3514(xxx) 15 December 1975); the Inter-American Convention Against Corruption (1996); the resolution of the Heads of Government of the Commonwealth of Nations (1999) concerning the Promotion of Good Governance and the Elimination of Corruption; the recent initiatives of the World Bank, the International Monetary Fund and the Asian Development Bank to strengthen governance; and the coming into force in February 1999 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions supplemented by the laws of member states designed to give effect to this Convention. Mr Jeremy Pope emphasised that effective strategies would require initiatives at the national level but that principles could be offered by an international group which could provide guidance and stimulus to initiatives at the local level.

1.7 Summary of Discussions

The chairman stressed the sensitivity of proposals involving the judiciary because of the need to protect the judicial institution and its members from inappropriate external interference. He acknowledged that corruption in public life manifested itself in various forms and was not limited to bribery. He and the rapporteurs provided summaries during the discussion by the Group of the items contained on the draft agenda, which the Group adopted. This record is based upon those summaries.

1.8 Issues

The following issues were considered by the Group, namely:

Public perception of the judicial system.

Indicators of corruption in the judicial system.

Causes of corruption in the judicial system.

Developing a concept of judicial accountability.

Remedial action.

Designing a process to develop plans of action at the national level.

1.9 Distribution

The Group agreed to make the results of its deliberations available to relevant international bodies (such as the International Commission of Jurists; Centre for the Independence of Judges and Lawyers; the International Bar Association; the International Association of Judges; the International Association of Prosecutors etc). The Group had before it a number of publications of such bodies including the recent report of the Centre for the Independence of Judges and Lawyers within the International Commission of Jurists, Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System; and the Standards for the Independence of the Legal Profession adopted by the International Bar Association (1990). The Group was also provided with numerous reports of other relevant international bodies including the Draft Working Paper of the United Nations Expert Group Meeting held in Vienna in April 2000 on Implementation Tools for the Global Programme Against Corruption.

1.10 Authorisation of the Distribution of this Record

The Group agreed, as appropriate, to authorise the distribution of this record to national bodies with concern about the strengthening of the judicial institution, such as National Judicial Service Commissions, National Associations of Judges, Bar Associations, Law Societies and other like bodies.

2. Recommendations

2.1 Suggestions for Action

The Group resolved to note the suggestions made by members during discussion. Those suggestions included the following:

2.1.1 Addressing Systemic Causes of Corruption

(1) *Data Collection*: There is a need for the collection and national and international exchange of information concerning the scope and variety of forms of corruption within the judiciary. There is a need to establish a mechanism to assemble and record such data and, in appropriate format, to make it widely available for research, analysis and response. In the context of the UN Global Programme Against Corruption and in initiatives for crime prevention, the establishment of an international data base of this kind, in appropriate format, should be a high priority.

(2) *Remuneration*: There is a need to improve the low salaries paid in many countries to judicial officers and court staff. Where it exists, there is a need to abolish the traditional system of paying “tips” to court staff on the filing of documents and the replacement of such salary supplements by conventional remuneration. (3) *Monitor*: There is a need to establish in

every jurisdiction an institution, independent of the judicature itself, to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff. Such an institution should include serving and past judges. It should possibly have a wider mandate and, where appropriate, be included in a body having a more general responsibility for judicial appointments, education and action or recommendation for removal from office.

(4) *Judicial Appointments*: There is a need to institute more transparent procedures for judicial appointments to combat the actuality or perception of corruption in judicial appointments (including nepotism or politicisation) and in order to expose candidates for appointment, in an appropriate way, to examination concerning allegations or suspicion of past involvement in corruption.

(5) *Codes of Conduct*: There is a need for the adoption of judicial codes of conduct, for the inclusion of instruction in such codes in the education of new judicial officers and for information to the public about the existence and provision of such codes against which the conduct of judicial officers may be measured.

(6) *Adherence*: There is a need to enhance requirements for newly appointed judicial officers formally to subscribe to such a judicial code of conduct and to agree, in the case of proved breach in a serious respect of the requirements of such code, to resign from judicial or related office.

(7) *Delay*: There is a need for the adoption in such a code and in practical administration of publicly available standards for the timely delivery of judicial decisions and for appropriate mechanisms to ensure that such standards are observed.

(8) *Assignment*: There is a need for the adoption of a transparent and publicly known (and possibly random) procedure for the assignment of cases to particular judicial officers to combat the actuality or perception of litigant control over the decision-maker.

(9) *Sentencing Guidelines*: There is a possible need for the adoption of sentencing guidelines or other means to identify clearly criminal sentences and other decisions which are so exceptional as to give rise to reasonable suspicions of partiality.

(10) *Case Loads*: There is a need for attention to excessive caseloads for individual judicial officers and the maintenance of job interest and satisfaction within the judiciary.

(11) *Public Knowledge*: There is a need to improve the explanation to the public of the work of the judiciary and its importance, including the importance of maintaining high standards of integrity. The adoption of initiatives such as a National Law Day or Law Week should be considered.

(12) *Civil Society*: There is a need to recognise that the judiciary operates within the society of the nation it serves and that it is essential to adopt every available means of strengthening the civil society of each country as a means of reinforcing the integrity of the judiciary and the vigilance of the society that such integrity is maintained. To combat departures from integrity and to address the systemic causes of corruption, it is essential to have in place means of monitoring and auditing judicial performance and of the handling of complaints about departures from high standards of integrity in the judiciary.

2.1.2 Initiatives Internal to the Judiciary

(13) *Plan of Action*: A national plan of action to combat corruption in the judiciary should be adopted.

(14) *Participation of Judiciary*: The judiciary must be involved in such a plan of action.

(15) *Seminars*: Workshops and seminars for the judiciary should be conducted to consider ethical issues and to combat corruption in the ranks of the judiciary and to heighten vigilance by the judiciary against all forms of corruption.

(16) *Computerisation of Records*: Practical measures should be adopted, such as computerisation of court files, in order to avoid the reality or appearance that court files are “lost” to require “fees” for their retrieval or substitution. In this respect, modern technology should be utilised by the judiciary to improve efficiency and to redress corruption.

(17) *Direct Access*: Systems of direct access should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing.

(18) *Peer Pressure*: Opportunities for proper peer pressure to be brought to bear on judicial officers should be enhanced in order to help maintain high standards of probity within the judicature.

(19) *Declaration of Assets*: Rigorous obligations should be adopted to require all judicial officers publicly to declare the assets of the judicial officer concerned and of parents, spouse, children and other close family members. Such publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official.

(20) *Judges’ Associations*: Associations of Judges and equivalent bodies should be involved in the setting of standards for the integrity of the judiciary and in helping to rule on best practices and to report upon the handling of complaints against errant judicial officers and court staff.

(21) *Internal Procedures*: Internal procedures should be adopted within court systems, as appropriate, to ensure regular change of the assignment of judges to different districts having regard to appropriate factors including the gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality.

(22) *Law of Bias*: Judicial officers in their initial education and thereafter should be regularly assisted with instruction in binding decisions concerning the law of judicial bias (actual and apparent) and judicial obligations to disqualify oneself for actual or perceived partiality.

(23) *Judges’ Journal*: A judge’s journal should, if it does not already exist, be instituted and it should contain practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary.

2.1.3 Initiatives External to the Judiciary

(24) *Media*: The role of the independent media as a vigilant and informed guardian against corruptibility in the judiciary should be recognised, enhanced and strengthened by the support of the judiciary itself.

(25) *Media Liaison*: Courts should be afforded the means to appoint, and should appoint, Media Liaison Officers to explain to the public the importance of integrity in the judicial institution, the procedures available for complaint and investigation of corruption and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial role and function, such as can occur (e.g. in a case involving an ex parte proceeding).

(26) *Inspectorate*: An inspectorate or equivalent independent guardian should be established to visit all judicial districts regularly in order to inspect, and report upon, any systems or procedures that are observed which may endanger the actuality or appearance of probity and also to report upon complaints of corruption or the perception of corruption in the judiciary.

(27) *National Training Centres*: National training centres should be established for the education and training of officers involved in inspecting courts in relation to allegations of corruption. Such training centres should include the participation of judicial officers themselves at every level so as to ensure that the inspectorate is aware of the functions and

requirements of the judiciary, including the importance of respecting and maintaining judicial independence.

(28) *Alternative Resolution*: Systems of alternative dispute resolution should be developed and made available to ensure the existence of alternative means to avoid, where they exist, actual or suspected corruption in the judicial branch of government.

(29) *Bar Associations*: The role and functions of Bar Associations and Law Societies in combating corruption in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities instances of corruption which are reasonably suspected. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption of the judicial branch.

(30) *Disbarment*: In the event of proof of the involvement of a member of the legal profession in corruption whether of a judicial officer or of court staff or of each other, in relation to activities as a member of the legal profession, appropriate means should be in place for investigation and, where proved, disbarment of the persons concerned.

(31) *Prosecutors*: The role of public prosecutors in the investigation of allegations of judicial corruption should be acknowledged and appropriate training should be available to such officers.

(32) *Judicial Administrators*: The proper function of judicial administrators to establish systems that help to combat the possibility or appearance of judicial corruption should be acknowledged. Appropriate training for such administrators in this respect should be available.

(33) *Involving Others*: Procedures that are put in place for the investigation of allegations of judicial corruption should be designed after due consideration of the viewpoint of judicial officers, court staff, the legal profession, users of the legal system and the public. Appropriate provisions for due process in the case of a judicial officer under investigation should be established bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption by disappointed litigants and others.

(34) *Criminal Law*: It should be acknowledged that judges, like other citizens, are subject to the criminal law. They have, and should have, no immunity from obedience to the general law. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law.

2.1.4 A Basis for Future Practical Programmes

The notation by the members of the Group of the above suggestions does not signify that all of them will be appropriate in every country represented in the Group. In some cases, the initiatives mentioned have already been taken and appropriate laws, procedures and institutions are in place. However, the Group agreed that the foregoing suggestions should be recorded and noted as a basis for future practical programmes designed to enhance integrity in the judicial branch of government.

2.2 Action by Global Programme

The Group resolved to request the Global Programme Against Corruption to:

(1) Make recommendations concerning the collection of data relevant to enhancing judicial integrity and relevant to surveys about allegations of judicial and other official corruption in particular countries;

(2) Collect initiatives and strategies which have already been taken to combat corruption in the judiciary and related offices; and to

(3) Post the foregoing on the Internet and to ensure that they are widely published and known to the judiciary and others.

2.3 Judicial Code

The Group agreed to request the Global Programme Against Corruption to analyse the Judicial Codes of Conduct which have been adopted in a number of jurisdictions and, within six months, to report to the Group concerning:

- (1) The core considerations which recur in such Judicial Codes of Conduct; and
- (2) The optional or additional considerations which occur in some, but not all, such Codes and which may or may not be suitable for adoption in particular countries.

2.4 National Involvement

The Group agreed to note that the judicial participants in the Group will inform the judiciary in their home countries of the establishment of the Group, of its work at its first meeting and of its future programme. They will consult with appropriate ministries, institutions, the Bar, Law Society and other organisations having a concern in strengthening the integrity of the judiciary.

2.5 Other Countries

The members of the Group recommended to the Global Programme Against Corruption that a parallel programme should be instituted in relation to civil law countries having differing systems of law and judicial organisation. The Group recommended that eventually there should be liaison between other groups dealing with countries of differing judicial tradition and this Group with a view to deriving principles common to all groups for adoption at the international level in recognition of the universal importance of strengthening the integrity of the judiciary.

2.6 Future Contact

The Group recommended that regular contact be established between the participants, observers and co-ordinators involved in the Group, and agreed to share information on action programmes and experiences. They recommended that the Group accept the invitation of the Chief Justice of Karnataka State, India (Chief Justice Y B Rao) that the second meeting of the Group should take place in Bangalore, India on 18-19 December 2000. Publication Series.

B. Strengthening Judicial Integrity and Capacity in Nigeria – A joint initiative by the Nigerian Judiciary and CACP

1. Project Background

The abuse of public power for private gain is widespread in Nigeria and is considered as being one of the country's most serious problems. Since 1996, Transparency International's Annual Corruption Perception Index has consistently rated Nigeria among the four most corrupt countries of those included in the survey ⁵.

As a political issue, corruption has influenced Nigeria's fate ever since gaining independence in 1960 ⁶. From the outset, widespread political abuse and corruption have overshadowed civil government. This contributed to general disillusionment within the country and, after only six years, led to the first military coup ⁷. Also, the second Republic, which lasted from 1979 to 1983, also came to an early end. Again the military took over mainly because the democratic government had not succeeded in diminishing rampant corruption ⁸. Once again the urgent need to put a stop to corruption was given as justification by the military ⁹.

In May 2000, a Conference entitled "Corruption and Organized Crime: Challenges for the Millennium", organized by the Nigerian Government and ODCCP in Abuja concluded, among other things, that: "The problem of corruption in Nigeria is real, and it is widely perceived as a threat to democracy, political stability and economic and social development. The President has demonstrated the political will to tackle corruption in Nigeria but the nation as a whole needs to be effectively mobilized to support integrity and transparency" ¹⁰.

Public mistrust towards the Nigerian Government's anti-corruption policies is additionally fueled by the difficulties encountered in the repatriation of the assets stolen through corrupt practices under the various past military regimes. The general feeling that the "big fish" are never caught is frustrating the Government's attempts to win and maintain the public's trust in the anti-corruption crusade. Successful (even partial) recovery of these monies would not only add to public confidence towards the Government, but would also improve significantly state finances and raise the risk and uncertainty of those involved in "grand corruption".

Meeting these challenges requires an effective and efficient court system with integrity, a condition that according to a recently conducted opinion poll among lawyers in the Lagos State does not seem to be in place. As a matter of fact, the poll drew a rather discouraging picture of judicial integrity, whereby 99% of the lawyers interviewed agreed there is corruption in the Lagos State Judiciary. It also showed, as seen in the chart below, that 66% of the lawyers with 6-10 years at the bar and 80% of those with 11-15 years, even believed that the prevalence of corruption is very high.

Moreover, the survey indicates a very low trust-level among lawyers towards the institutions regarding their willingness in addressing judicial corruption. Over 40% of the respondents

⁵ Transparency Corruption Perception Index 1996, 1997, 1998, 1999, 2000, 2001 <http://www.transparency.de>

⁶ Annex 1: The political development of Nigeria, excerpt from Uche Felix Onwukike, *Democracy in Nigeria, Its Anthropological and Social Requirements*, European University Studies, pp. 111-191

⁷ Uche Felix Onwukike, *Democracy in Nigeria, Its Anthropological and Social Requirements*, European University Studies, p. 132

⁸ Jimi Peters, *The Nigerian Military and State*, International Library of African Studies, p.187

⁹ Major-General Buhari in a news conference on January 5, 1984, four days after coming into power through a military coup on new years day 1984.

¹⁰ See Annex 2: Communiqué of the International Conference on "Corruption and Organised Crime: the Challenges for the Millennium".

indicated, they would not report suspicious judicial officers, because, they believed no action would be taken. Furthermore, 53% of the respondents would not report for fear of victimization.

Even though the respondents might partially have been exaggerating in their estimates in order to draw the attention from allegations against their own profession, the situation seems to be rather devastating.

The poor state of affairs of the judiciary affects the broad universe of people continuing to be left without the rule of law and consequently without any possibility to claim their rights in circumstances where the violation of these rights is widely spread. This leads to a general deprivation of all basic services, such as health, education, security etc.

The lack of the rule of law not only has an extremely negative effect on everyday life and consequently the public's trust towards the Government, but it also hinders both the asset recovery effort currently undertaken by the Nigerian Government and the prevention of future diversion of funds. As far as the recovery effort is concerned, the rather discouraging situation of the criminal justice system at large and the judiciary in particular create a serious credibility problem. According to reliable sources, it is for this reason, that some countries have been rather cautious in responding to the requests of Nigeria for mutual legal assistance.

The absence of the rule of law also gives rise to a preoccupation that the returned assets might be diverted again. Since outside influence of the allocation of returned assets is naturally not acceptable to Nigeria, as it would not be for any sovereign State, the only alternative seems to consist in strengthening the institutional anti corruption framework in order to contribute indirectly to the prevention of future transfers of illicitly acquired funds.

A series of steps have been already undertaken to fight corruption in Nigeria. In 1999, a Special Fraud Unit was established within the Criminal Intelligence Department of the Police with the mandate to investigate and prosecute corruption, fraud, embezzlement and illegal transfers and to trace and recover the respective assets.

In 2000, the Corrupt Practices and other Related Offences Act was introduced, creating a set of additional offences to those already punishable under the Penal and Criminal Codes ¹¹. The same Act provides the legal basis for the establishment of an Independent Anti-Corruption Commission consisting of 13 members of "proven integrity", with a vast variety of backgrounds representing a large group of stakeholders, including a retired police officer, a legal practitioner, a retired public servant, a representative of the youth, a woman, an accountant and a retired judge. This Commission, which was set up in late 2000, has been equipped with an utmost comprehensive mandate including the (1) investigation and prosecution of cases of corruption, (2) the identification of institutional and organizational insufficiencies enhancing corrupt practices, and (3) the education and motivation of the public in fighting corruption. In order to fulfill this mandate the Commission has been given wide-ranging powers to investigate cases, arrest suspects and seize corruption proceeds.

With respect to the strengthening of judicial integrity and capacity, the Nigerian Federal Supreme Court is strongly committed to addressing these issues. The Chief Justice of Nigeria who was prepared to discuss openly the problem of judicial corruption during the first meeting of Judicial Leadership Group on "Strengthening Judicial Integrity" organized by CICP in Vienna from 15-16 April 2000 ¹². This initiative was received as a "welcome development" by the participants of the Conference on "Corruption and Organized Crime: Challenges for the Millennium".

¹¹ Annex 3: Corrupt Practices and other Related Offences Act, 2000, Cap. 359 LFN 69

¹² Annex 4: Judicial Group on Strengthening Judicial Integrity, Report of the first meeting in Vienna Austria 15-16 April 2000

During this Conference, the Chief Justice, in collaboration with CICIP, began to develop a preliminary draft action plan for the Nigerian judiciary. This draft as well as the outcomes of the first and second meeting of the Judicial Leadership Group will serve as a basis for the development, implementation and monitoring of a Anti-Corruption Action Plan, both at the Federal level and within three pilot States ¹³.

In view of and with respect to judicial independence, the Chief Justice will serve as the focal point for the implementation of the project. The responsibility for the strengthening of the judicial integrity lies exclusively with the judiciary itself. Particularly in a common law jurisdiction, any attempt to strengthen judicial integrity from the outside would be perceived as interference into judicial independence and would therefore most unlikely have a sustainable impact.

ODCCP has been assisting West Africa in general, and Nigeria in particular, for several years. Support was provided in the development of appropriate and harmonized drug control legislation and in the creation of national drug control coordination bodies, the development of national drug control policies, and the improvement of technical capacities in individual drug control sectors. A regional drug control priority programme for the years 2000-2004 in West Africa covers a comprehensive set of activities, including control measures, demand reduction and policy development at the country and regional levels. This project is part of ODCCP's integrated strategy for Africa which addresses the issues of corruption, organized crime, money laundering, drug control and the trafficking in human beings.

2. Problem to be addressed

The project will address the precarious situation of the rule of law in Nigeria caused by insufficient integrity and capacity of the justice system in general and the judiciary in particular. There is a general lack of efficiency and effectiveness in the Nigerian Judiciary as a whole to deal with complex and time-consuming proceedings, which are the norm in major corruption cases. The inability to deal with corruption inside the judiciary and strengthen its integrity is an integral part of the overall corruption problem. At this early stage, the main challenges faced by the Nigerian Judiciary are the absence of thorough knowledge and data regarding the extent and nature of and the reasons for the malfunctioning of the judiciary. Finally, there is a lack of a systematic, realistic, time-bound and broad-based anti-corruption action plans, both at the Federal and State levels.

The here proposed project tries to fill this gap by supporting the Nigerian Judiciary in assessing the levels, causes, locations, types and costs of corruption in the justice system as well as in planning, implementing and monitoring a sustainable reformatory process both at the Federal level and within three pilot States. The assistance provided by CICIP in this context reflects the comprehensive, integrated, evidence based and impact oriented approach generally applied by its Global Programme against Corruption.

The Government of Nigeria has made anti-corruption reforms one of its policy priorities. The country needs assistance to curb corruption otherwise it will not succeed in increasing political stability and building trust among its population, both of which are essential preconditions for lasting economical, social and political development.

3. Project Strategy And Expected Outcome

The Project is designed to assist the Nigerian authorities in the development of sustainable capacities within the Nigerian judiciary and to strengthen judicial integrity. Its aim is to contribute to the re-establishment of the rule of law in the country and to create the necessary preconditions for handling complex court cases in the area of financial crimes. The proposed

¹³ Annex 5: Judicial Group on Strengthening Judicial Integrity: Report of the second meeting in Bangalore, Karnataka State, India, 24-26 February 2001

outcome is the development of a functioning institutional anti corruption framework to contribute to the prevention of transfers of funds of illicit origin and the recovery of such funds.

In the absence of an in-depth knowledge of the current capacity and integrity levels within the judiciary and consequently of an evidence-based anti-corruption action plan for the judiciary, this project will focus on supporting the Nigerian Judiciary in the ***action planning, implementing and monitoring process***.

The preconditions for evidence-based planning will be made available through the conduct of capacity and integrity assessments of the justice system in three pilot States including a desk review of all relevant information regarding corruption in the justice system and anti-corruption measures; face to face interviews with judges, lawyers and prosecutors; surveys with court users, judges, lawyers, prosecutors, court staff, police and prison staff; an assessment of the rules and regulations disciplining the behaviour of judges; a review of the institutional and organisational framework of the justice system; and the conduct of focus groups ¹⁴.

Based on the outcomes of this assessment, CICP will advise the judiciary at the Federal level and in the three pilot States on developing, implementing and monitoring of plans of action focusing on the strengthening of judicial integrity and capacity. The support given in the context of the implementation of the action plans remains at this stage limited to three pilot States. This is not only due to budgetary constraints. Focusing on three pilot States will give CICP the possibility to refine its approach based on the lessons learned. Moreover, this approach will allow CICP to advise the Nigerian judiciary at the Federal level as well as within the remaining 32 States accordingly. At the same time it is envisaged that the proposed way of proceeding will encourage the Chief Justices of the other States to follow best practices generated by the pilot States. Hereby the impact of the project may be multiplied significantly.

Several judicial reform projects of the past show that, in order to be successful, action needs to be taken at all levels of the judiciary ¹⁵. Following the here proposed scenario, it will be possible to reach a critical mass of judges within the same geographical and geopolitical context and to closely involve them in the implementation of the project.

CICP will facilitate two Integrity Meetings at the Federal level and three at the State level. The purpose of the first Federal Integrity Meeting in this context will be to launch the reformatory process with the development of a broad based and comprehensive draft action plan for strengthening judicial integrity and the selection of three pilot States, reflecting the three main geopolitical/ tribal areas of the country Hausa and Fulani, Yoruba and Igbo. This Federal action plan will then be used as a basis for the development of similar action plans within three pilot States taking into account the specific needs existing at this level. Furthermore, the Centre will then support the implementation of single measures identified by the State level action plans as priorities. Such tasks could include among others: (1) the establishment and training of a social control function monitoring the compliance of judges with the Code of Conduct; (2) the computerization of court records in selected pilot courts; (3) the establishment and support of State-level judicial training institutes; (4) the introduction of a court decision monitoring mechanism; and (5) a system of 'peer evaluation'.

Both the experiences gained from the implementation of the State level action plans as well as from the integrity and capacity assessments will then feed into the refinement of the Federal Action Plan. Hereby, CICP will contribute to the establishment of a systematic action learning

¹⁴ The assessment of judicial integrity and capacity will be conducted following the recommendations made by the second meeting of Chief Justices on "Strengthening Judicial Integrity" held in February 2001 in Karnataka State, India.

¹⁵ Costa Rica and Singapore may be quoted as examples in this context.

process leading to the identification of best practices. In this context, the project will focus on the transfer of planning-, monitoring- and implementing-skills in order to create the necessary local capacities to continuously broaden and intensify the reformatory process within the Federal and State Judiciaries.

On completion of the project, it is expected that the judiciary, supported by CICIP, will have developed evidence-based, integrated, comprehensive action plans at the Federal level and within the three pilot States. The necessary evidence for such a strategic planning and comprehensive policy formulation exercise will have been provided by the above-mentioned assessment and the pilot-testing of single anti-corruption tools at the State-level. The sustainability will be assured through the involvement of a broad-based group of stakeholders from all institutions of the justice sector and other agencies active in the fight against corruption, as well as the civil society including the victims of corruption. The political will for change, already existing at the level of the Federal Supreme Court, will have been transmitted to the State level and will be supported by a critical mass of judges of all levels.

After adopting the Draft Federal Action plan to the concrete situation and requirements within three pilot States, the Centre will have supported the implementation and monitoring at the State level. The lessons learned in this process will have led to the identification of best practices and the refinement of the existing action plans. The experiences gained through the conduct of the assessment, the implementation and the monitoring of the action plans will have provided a solid basis for further actions to strengthen judicial integrity and capacity on a broader scale, both at the Federal and State level. Ultimately, this will contribute substantially to forming the basis for the re-establishment of the rule of law in the country.

The immediate beneficiary is the Nigerian judiciary, both at the Federal and at the State level. Ultimately, once the reform process starts to show results, the levels of capacity and integrity begin to increase and the rule of law is strengthened, it will be the country and its people who will mainly benefit from this initiative.

4. Project Reviews: Reporting And Evaluation

A central component of the project, which also relates to the Action Learning Component of the Global Programme against Corruption, is the systematic, periodic on-going evaluation by CICIP. At semi-annual intervals, the project outcomes will be monitored and the progress made evaluated by CICIP, UNOPS in conjunction with the Ministry of Justice and the Chief Justice. The Government will facilitate review missions by CICIP, as requested. The terms of reference, duration and purpose of any mission will be agreed upon with the Government prior to fielding an evaluation team.

The final progress report and evaluation will be conducted by an independent expert and recommendations with regard to additional areas of assistance required, as identified during the project implementation, will be provided. This report will be reviewed at the annual and final Tripartite Review Meetings among the Ministry of Justice, the Chief Justice, the donor country, CICIP and other parties directly engaged in the execution/implementation of the project.

The project is subject to examination/audit by the United Nations Board of Auditors and the Office for Internal Oversight (OIOS). ODCCP will coordinate with the Associate Agency to facilitate such audits and to follow up on the implementation of agreed audit recommendations.

The final Progress Performance Evaluation Report (PPER) will evaluate the actual impact of the project. Particular attention will be given to:

The quality of the Federal and State level action plans, specifically with regard to the level of detail, the clear establishment of responsibilities, timeframes and the assessment of human and financial resources needed.

The number and amounts of donor contributions made or pledged in support of the implementation of the action plans, both at the Federal and State level.

The level of commitment in terms of allocation of resources, both human and financial, to the implementation of the single activities proposed under the Federal and State-level action plans.

The amount of activities undertaken by the Judiciaries within the three pilot States in execution of the respective Action Plans developed under this project. The successful implementation of the project activities resulting in the project outputs;

The impact of the single anti-corruption measures carried out within the framework of the State level action plans, specifically in terms of:

- ◆ Increased access and timeliness to justice.
- ◆ Improved quality of the delivery of justice
- ◆ Strengthened public confidence in the judiciary

II. OUTCOME OF THE 1ST FEDERAL INTEGRITY MEETING FOR CHIEF JUDGES

A. The General Plenary Discussion

The Workshop participants agreed that regardless of the constitutionally guaranteed independence of the Judiciary as the third arm of Government a series of factors continue to hamper the achievement of true independence of the Executive and the Legislator.

Particularly mentioned was the fact that while all Judges are appointed and dismissed by the National Judicial Service Commission or the Judicial Service Commissions at the State Level, the power to dismiss of the Chief Judges rests with the Legislator. Unlike in the case of all other judicial officers, who only can be dismissed because of proven misbehaviour, the parliamentary bodies are in the position to simply vote the Chief Judge out of office without being bound to give any rational. The participants agreed that this provision greatly reduces judicial independence and the balance of powers.

Furthermore, the participants identified the budgetary dependence on the executive as a serious obstacle to judicial independence. This has created some rather embarrassing situations as far as the propriety of judicial behaviour is concerned. As a matter of fact, some Chief Judges have been found “courting” their State Governors for providing the necessary budgetary resources to maintain the functionality of the judiciary. It was concluded that unless the Executive became more sensitive towards its obligation to avoid the perception of any direct or indirect control of the judiciary public confidence in the judiciary would continue to suffer.

The participants concluded that the judiciary’s main strength lay within the moral authority of its decisions instilling public confidence. Unfortunately public confidence due to a series of causes, often outside the control of the judiciary, is increasingly eroding the trust of the public. Particularly delays during all stages of the trial process were found to be damaging the image of the judiciary even though repeated adjournments often are caused by factors external to the judiciary witnesses not attending, offenders not being produced by the police and/or prison services and bailiffs not enforcing court decisions. At the same time that in most cases such problems are rather linked to logistical problems within the other criminal justice institutions such as poor equipment, lack of resources, understaffing etc. etc. than to outright refusal to co-operate. Some of these problems, in particular the co-operation between the various criminal justice institutions are being addressed with some laudable results by the criminal justice services commissions at the state level.

However, the disrespect, perceived or real, which is given by the other institutions of the criminal justice system to the decisions taken by the judiciary, erodes the respect of the public towards the judiciary and as a consequence undermines public confidence. Being the judiciary’s most important asset, the decreasing trust results also in a general reluctance of the public to fulfil its own civil duties of appearing in court, giving evidence and complying with court orders.

The increasing congestion of the justice system is also forcing people to search for alternatives and, in the absence of a functioning channels for alternative dispute resolution, to take justice into their own hands.

Additionally, the trust in the judiciary is being undermined by sometimes inaccurate and exaggerating media reports. This problem, however, does not only seem to be caused by sensationalism but also by lacking readiness of judges to liaise and appear in the media explaining the rational for certain decision which at prima facie causing the perception of malpractice, political influence or corruption.

One participant also mentioned an insufficient will of the judiciary to address malpractice within its own rows in a systematic way. Most Judges will only react upon specific

complaints while there is a need for a more proactive and comprehensive approach towards eradicating judicial misbehaviour.

The meeting also addressed the issue of overcrowded prison, a problem which partially is being caused by delays before and during the trial process and by the lacking possibility/ use of disposing of cases through alternative sanctioning (?).

Various efforts to remedy the above described situation are being undertaken. Some of them such as the Code of Conduct and its broad dissemination as well as the establishment of the criminal justice co-ordination boards have been implemented by the judiciary itself others being carried out with the help of donors, such as USAID and DFID in various pilot courts across the country.

B. The Findings from the Participant Survey

During the workshop a survey consisting of six questions was handed out to the participants. Out of 55 work-shop participants 35 filled out and submitted the questionnaire (annex 1). Out of the 38 present Chief Judges, Grand Kalis and other senior judges, 33 participated in the survey.

Question 1:

Out of the key problem areas identified by the international Chief Justices' Leadership Group, how does each rate as a priority for your State?

KEY PROBLEM AREAS	Priority Rating	Very Low	Low	Medium	High	Very High
Judicial Training	1	-	-	11	11	77
Merit based judicial appointments	2	-	3	14	14	69
Public Confidence in the Judiciary	3	-	3	12	24	62
Court Records Management	3	-	3	9	43	46
Credible and effective Complaints System	5	-	9	17	20	54
Adequate and fair remuneration	6	3	11	14	11	60
Enforcement of Code of Conduct	7	-	11	17	20	51
Increased judicial control over delays created by litigants lawyers	8	-	-	15	50	35
Court Delays	9	-	15	12	24	50
Case Assignment System	10	3	3	24	21	48
Case Management	10	6	-	21	38	35
Abuses of procedural discretion	12	-	21	9	38	32
Generation of reliable court statistics	13	3	9	38	15	35
Case Load Management	14	6	6	25	31	31
Abuses of substantive discretion	15	9	9	19	28	34
Sentencing Guidelines	16	6	3	31	41	19
Communication with court users (e.g. court user committees)	17	6	24	32	29	9

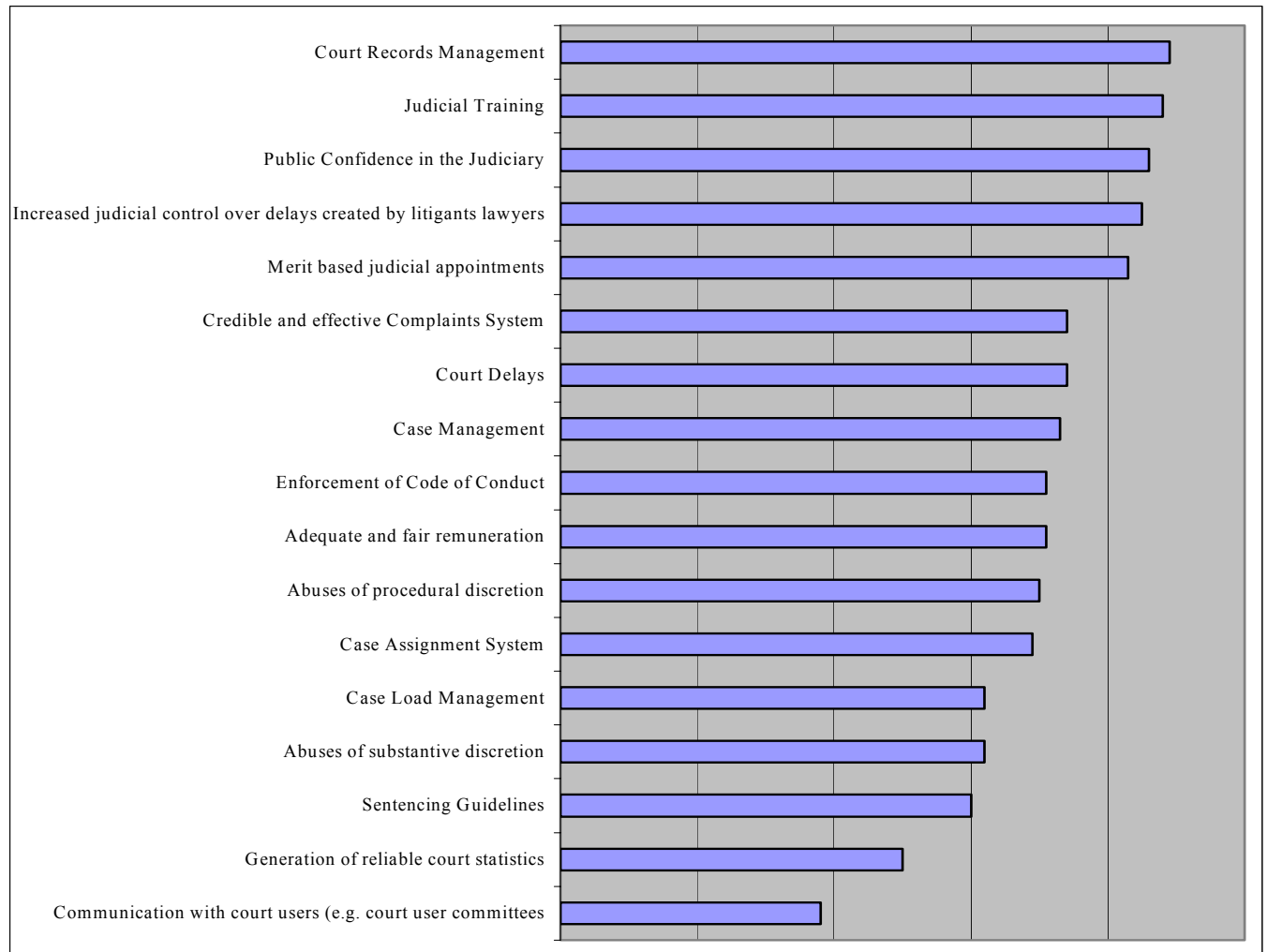
Out of the 17 areas the participants rated five as “top-priorities”. These included court records management, judicial training, public confidence in the judiciary, judicial control over delays caused by litigant lawyers and a merit based system of judicial appointment.

Medium priority was given to the establishment of a credible and effective complaints system, the reduction of court delays in general, the enforcement of the Code of Conduct, the reduction of abuse of procedural discretion and an improved case assignment system. In this context it was interesting to observe that adequate and fair remuneration, one of the generally preferred reform recommendations of most judiciaries in developing countries and countries in transition was only given medium priority.

Relative low priority was given to improved case load management and the creation of reliable court statistics. Also the abuse of substantive discretion and consequentially the necessity of sentencing guidelines was not seen as a matter of urgency. Astonishingly, by far

the lowest priority was given to an improved communication with the court users. There are some doubts whether the question was correctly understood by most of the respondents since at the same time increasing public confidence within the courts was seen as one of the top-priorities.

Areas considered by the participants as “high” or “very high” priorities



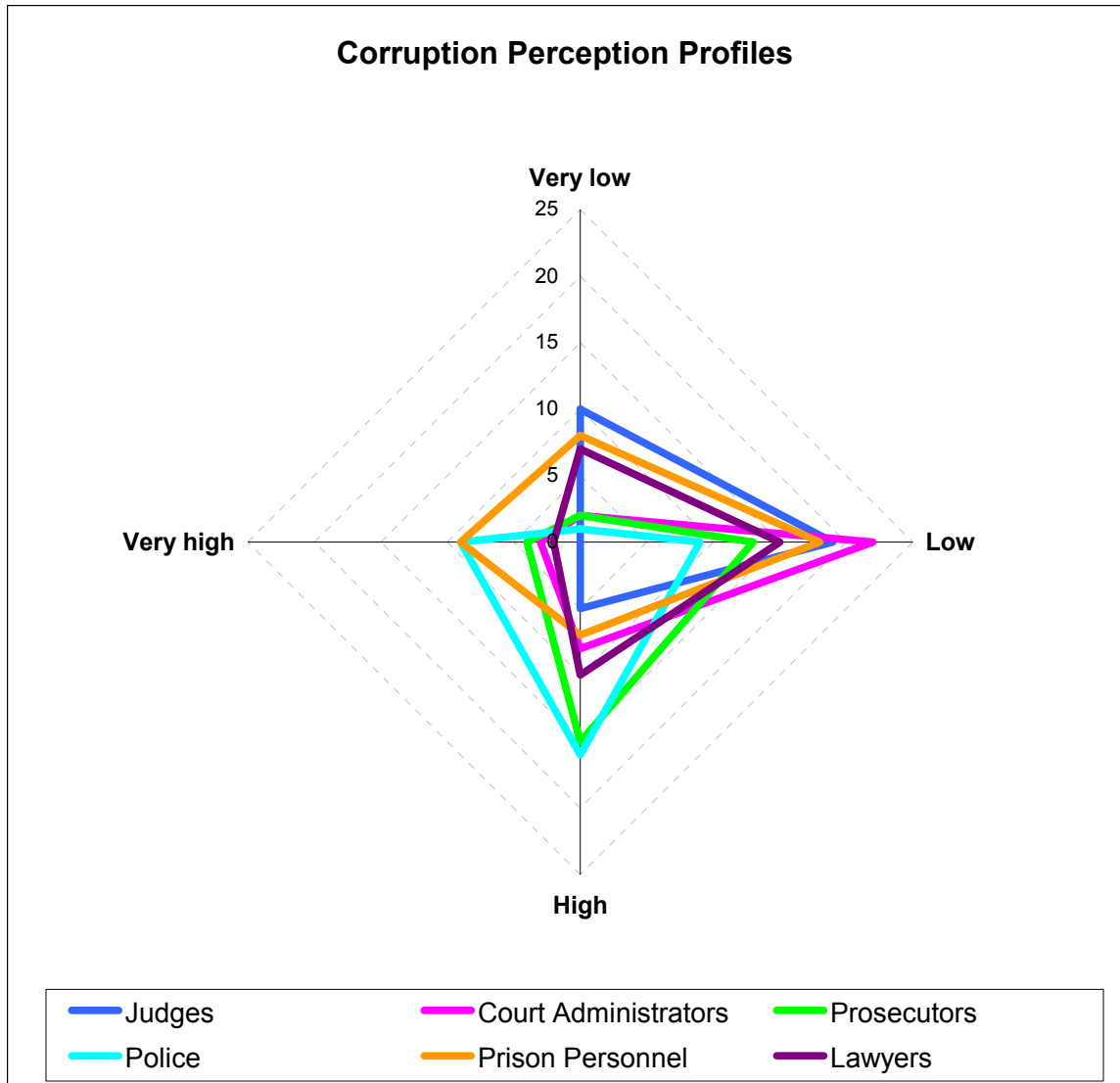
Question 2

Rank the levels of, in your opinion, corrupt practices within the criminal justice system outside your own court among the following professional categories:

Professional categories	Corruption perception			
	Very low	Low	High	Very high
Judges	10	19	5	0
Court Administrators	2	22	8	3
Prosecutors	2	13	15	4
Police	1	9	16	9
Prison Personnel	8	18	7	9
Lawyers	7	15	10	2

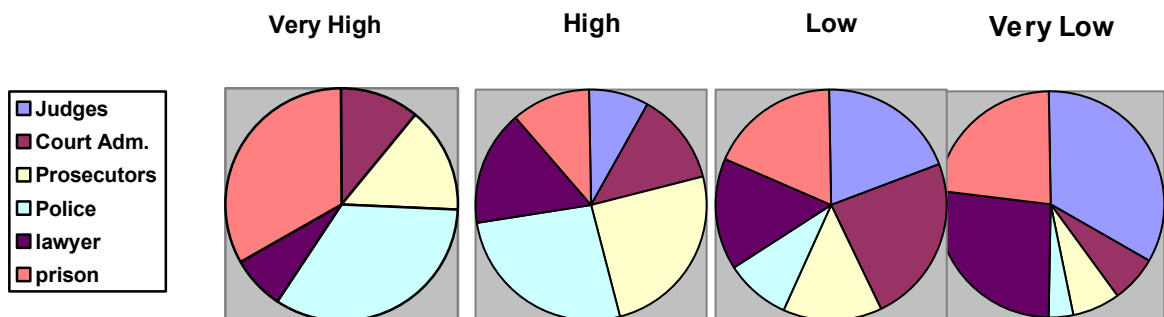
It was foreseeable that the participants, coming mainly from the judicial domain, would most likely rank the judiciary as the least corrupt institution among those surveyed. This, however, may not only be due to an understandable urge to protect one's own profession from misperceptions. Rather it could be caused by the deeper insight into one's own domain. While the estimates regarding the other professions are more likely to be based on perceptions, those concerning the judiciary presumably represent a more realistic assessment of the situation.

Surprising was the relatively high perception of corruption among prosecutors, second only to the perceived levels of corruption inside the police. However, the plenary discussion revealed in this respect, that most respondents in this regard were referring to police prosecutors rather than to those working for the Office of the Attorney General.



Corruption perception relative to professions

Levels of Corruption:

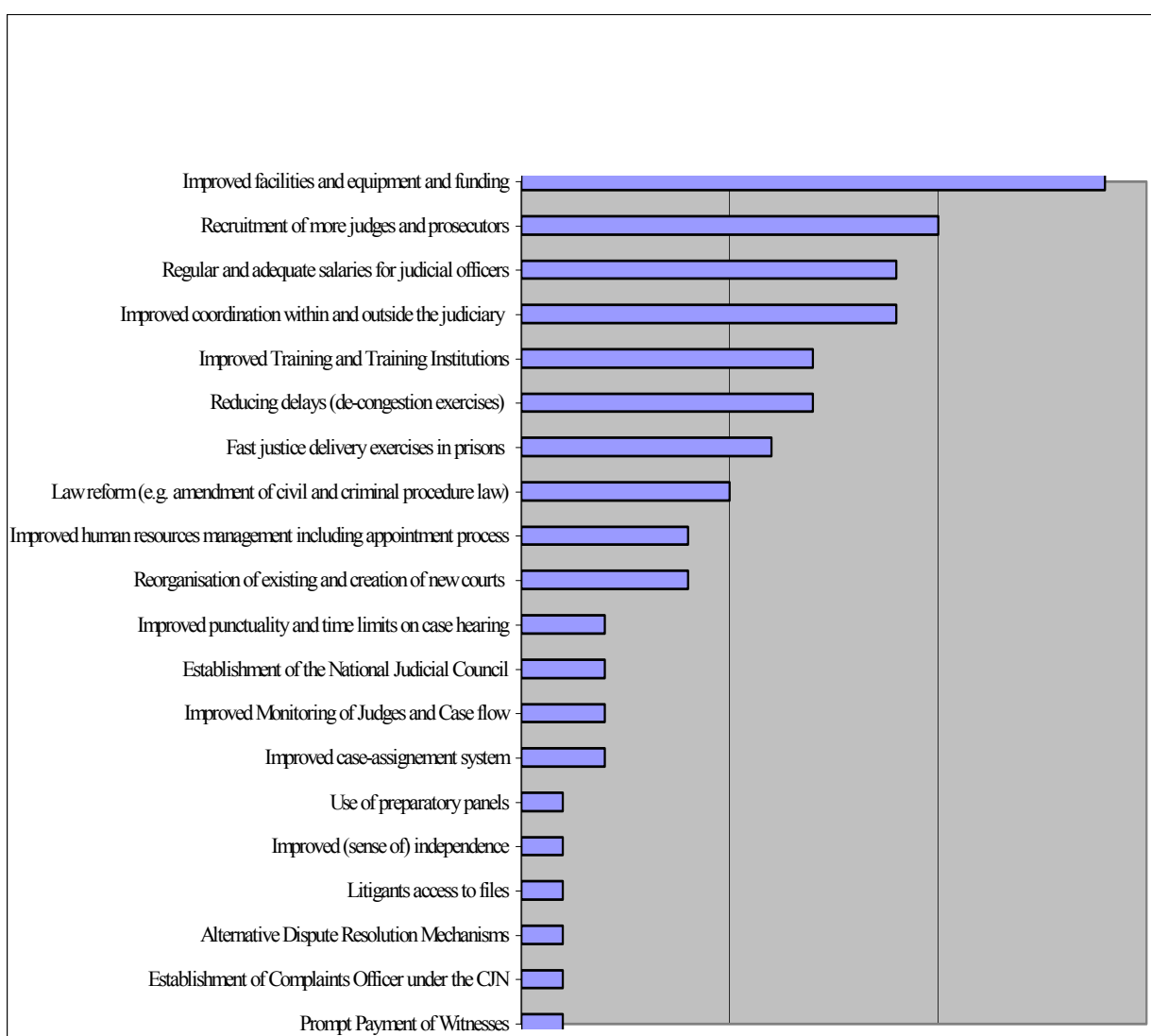


Question 3

Please state the three most successful measures in the last five years that have been implemented in your state to increase the quality and timeliness of the delivery of justice?

The Most effective Measure in the last five Years

The Universe of answers was extremely comprehensive and exceeded the above chosen



categories. Also one has to bear in mind that the establishment of the categories directly influences the number of counts. The ranking is therefore giving only an indication of what measures produced the best results. As an example in this regard might serve the various delay-reducing measures that, unlike the question of funding, equipment and facilities were not merged all into one category but, also because of the importance of the single measure in the opinion of the workshop secretariat, divided into several categories.

However, it emerged clearly that the most effective measures that have been implemented in the course of the past five years consisted in providing the criminal justice system with the very basics, such as funds, equipment, facilities and an adequate remuneration. Also as highly effective were rated those efforts that were made to increase the integration of the criminal justice system. These initiatives seem to have succeeded to some degree in bringing the judge

out of his or her traditional isolation and contributed to a more effective use of resources and time within the criminal justice process.

Categories chosen	Various answers given included:
Improved facilities and equipment and funding	Improved facilities and welfare, furnishing of high court complex, new cars for judicial officers, improved mobility of judicial officers and more court space and equipment.
Recruitment of more judges and prosecutors	Appointment of more judicial officers, full complement of judges, recruitment of more lawyers into Ministry of Justice,
Improved coordination and dialogue within the judiciary and with the other criminal justice institutions	Establish criminal justice committee, regular meetings of committee for the speedier administration of justice.
Regular and adequate salaries for judicial officers	Salary Increases to Judicial Personnel and regular payment of salaries
Fast justice delivery exercises in prisons	Gaol delivery exercise for prisons, prison visits (to review warrants), prison visits by judges, prison visits by criminal justice committees, alternative Dispute Resolution
Reducing delays (de-congestion exercises)	Regular de-congestion exercises, creation of a division for quick dispensation of justice.
Law reform (e.g. amendment of civil and criminal procedure law)	Civil procedure reform, enactment of new civil procedure rules, legal reforms of substantive provisions.
Reorganization of existing and creation of new court divisions (delivery of justice close to the people)	Decentralisation of Courts, Creation of more courts, new magisterial district courts, establishment of courts of all type closer to the people
Improved Training and Training Institutions	Workshops by National Judicial Institute (NJI), NJI training and retraining of judicial officers, training programmes for court officials
Improved working conditions, human resources management including appointment process and security	Security of office, merit based appointments and transfers

Generally quite effective were also efforts to minimise the congestion of courts. In this regard particular emphasis was given to those initiatives trying to remedy the overpopulation of prisons. As a matter of fact if all such measures are considered together that concern the way of “how business is done”, in particular the organisational and management reforms, they constitute by far the one most mentioned reform.

However, since the question as such does not allow for a ranking of the measures but simply reveals in how many states certain measures have been implemented successfully, it does not seem appropriate to ignore any single answer given. A complete account of all answers is therefore given in the following.

Categories chosen	Various answers given included:
Litigants access to files	Litigants have access to court records
Improved Monitoring of Judges and Case flow Management	Monitoring by Chief judge of cases assigned, preferential treatment of criminal cases on appeal, Cases dealt with on first come first served basis.
Improved punctuality and time limits on case hearing	Courts sit on time, time limits for hearing cases, delivery of judgements within 3 months
Prompt Payment of Witnesses	Prompt payment of witnesses
Establishment of Complaints Officer under the CJN	Direct complaints to complaints officer under the chief justice.
Establishment of the National Judicial Council	National Judicial Council created
Alternative Dispute Resolution Mechanisms	Alternative Dispute resolution
Improved case-assignment system	Cases dealt with on first come, first served
Improved (sense of) independence	Sense of improved independence
Use of preparatory panels	Supreme Court – use of panels to make more time for preliminary preparation

Other answers, which corresponded to none of the given categories included measures such as the encouragement of legal practitioners to work harder and the increased emphasis on substantive law rather than technicalities.

Question 4

Please state the three most important constraints you face in your state in the delivery of justice?

As the main constraints the participants mentioned mainly inadequate funding, equipment and facilities as well as working material such as Law books and journals. It is interesting to observe that this measure was not only quoted as the single most effective measure which has been implemented during the last five years, but that it is being rated also as the biggest constraint which continues to hamper the effective delivery of justice. It seems that besides the initial promising steps that have been undertaken by the government to upgrade the facilities and the equipment of the courts much remains to be done.

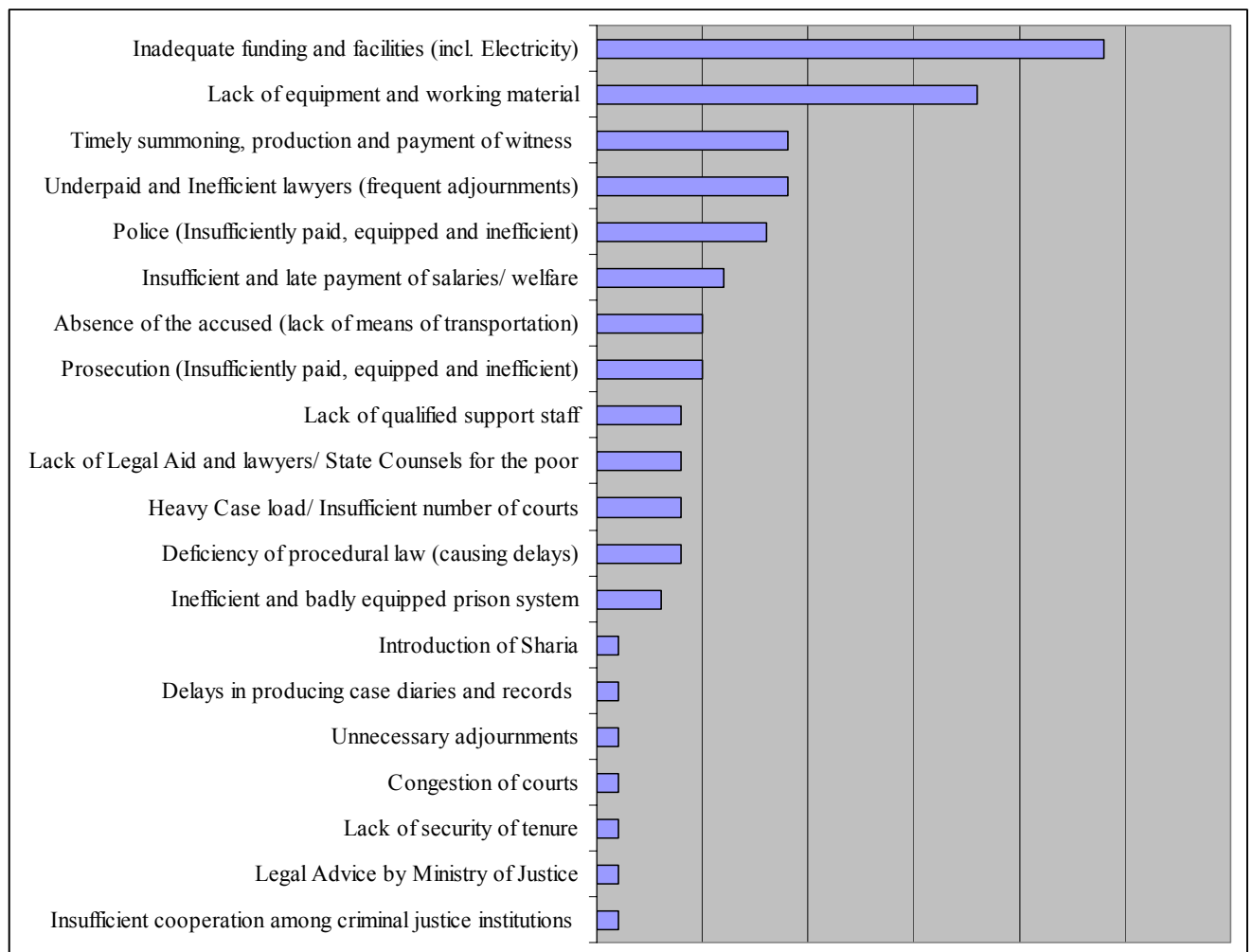
<u>Constraints</u>	Number of References made	Rank
Inadequate funding and facilities (incl. Electricity)	24	1
Lack of equipment and working material	18	2
Underpaid and Inefficient lawyers (frequent adjournments)	9	3
Timely summoning, production and payment of witness	9	3
Police (Insufficiently paid, equipped and inefficient)	8	5
Insufficient and late payment of salaries/ welfare	6	6
Prosecution (Insufficiently paid, equipped and inefficient)	5	7
Absence of the accused (lack of means of transportation)	5	7
Deficiency of procedural law (causing delays)	4	9
Heavy Case load/ Insufficient number of courts	4	9
Lack of Legal Aid, lawyers and State Counsel defending the poor	4	9
Lack of qualified support staff	4	9
Inefficient and badly equipped prison system	3	13
Insufficient cooperation/ coordination among criminal justice institutions	1	14
Legal Advice by Ministry of Justice	1	14
Lack of security of tenure	1	14
Congestion of courts	1	14
Unnecessary adjournments	1	14
Delays in producing case diaries and records	1	14
Introduction of Sharia	1	14

Another constraint mentioned was the lack of legal aid and the difficulties that poor litigants faced in finding a lawyer. In a country like Nigeria where according to cautious estimates at least one third of the population is living under the poverty rate such a situation must have a devastating effect on the equality of all citizens in front of the law.

Besides these problems related mainly to scarce resources, many of the additional constraints find their root cause not within the judiciary itself but in the other criminal justice institutions. Particularly the lawyers, the police and to a certain degree also the prosecutorial domain create, according to the participants, a fair amount of obstacles to a smoothly functioning criminal justice process.

In particular, the backlog of cases, to a large extend due to continuous adjournments and delays at all stages of the criminal justice process seem to seriously impact on the efficiency of the courts. Files are not being produced on time, witnesses do not turn up, because they are not being refunded, lawyers and prosecutors are badly prepared and the accused is not being brought to court because of the lack of transportation include only some of the more frequent problems encountered.

The main constraints in the delivery of justice

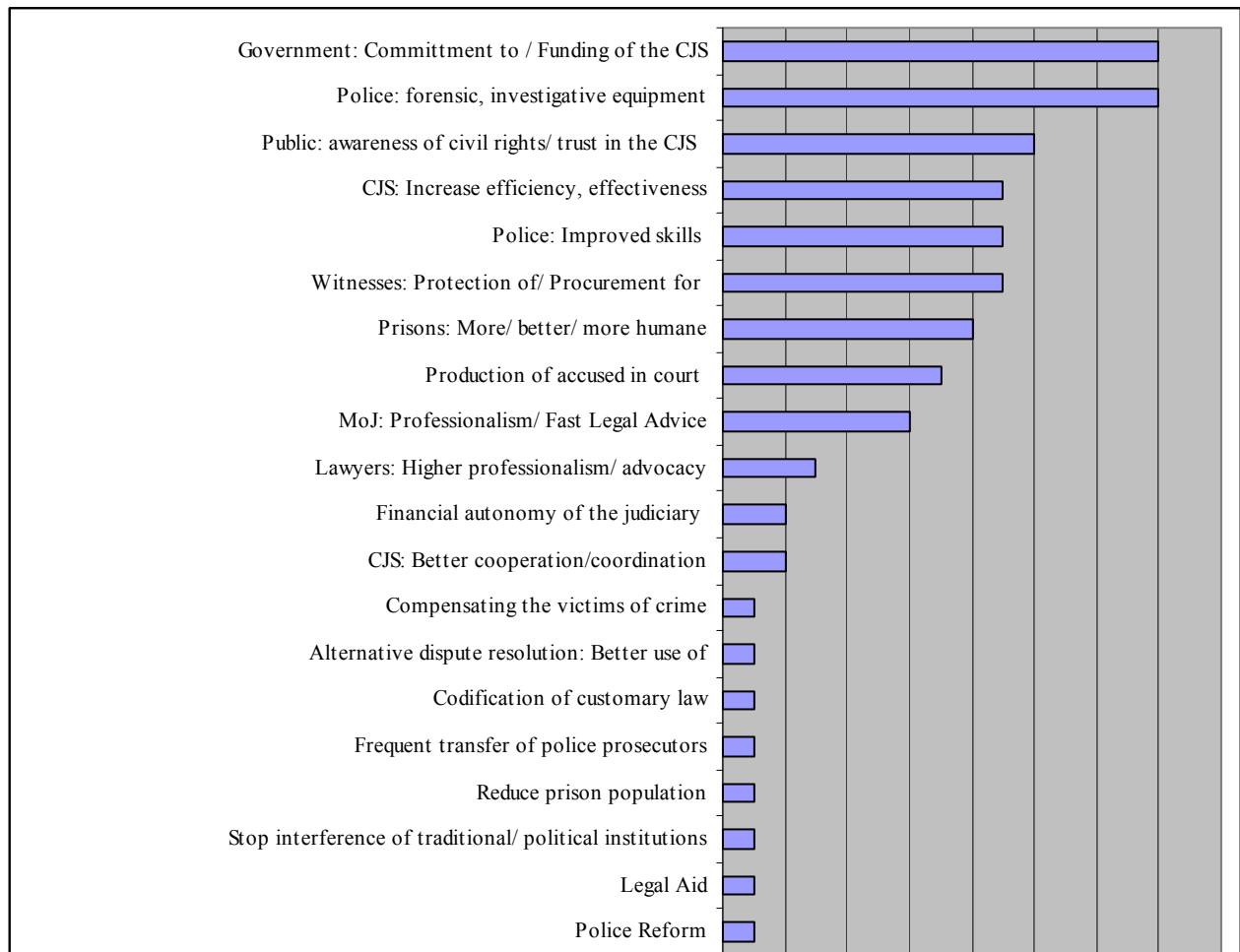


Question 5

State what in your opinion are the three most important improvements needed in the criminal justice system outside the court system?

The answers given to this question were differing quite significantly in scale and scope. Some of them were far reaching long-term improvement such as police reform and increased awareness of the general public regarding its civil right, its understanding of and trust in the criminal justice while others contained much more specific recommendations concerning the solution of immediate problems such as transporting suspect and accused to court.

Most important improvements needed outside the court system



The vast gamma of answers given rendered categorisation rather difficult. Some very specific measures even though conceptually part of other more far reaching ones were quoted separately because of the specific importance given to them. An example for this might be again the transportation of the accused to and from the courts which at the same time falls within the wider universe of increasing and improving police equipment in general or even reorganising the entire police force.

It was the Police which emerged as the one most mentioned single institution. Improvements needed included better training, improvement of investigative and forensic skills and equipment and the establishment of a central data bank on crime. There seems to be a general agreement among all participants that the Police is the most needy branch of the criminal justice system. Only if serious efforts are made to bring about the various improvements mentioned, the criminal justice system at large has a chance to become more efficient and effective.

Another institution repeatedly mentioned was the prison system. Many participants recommended not only the creation of new prisons and the upgrading of the existing ones but also insisted that detention should be rendered more humane. Furthermore, it was requested that prison services should focus more on its rehabilitating function.

Another area identified consisted in the handling of witnesses. Most of the recommendations given in this regard dealt either with the prompt and adequate refunding of witnesses or with their protection.

These and other statements again confirmed that many of the most urgent improvements needed to increase in particular the timeliness of the delivery of Justice root actually outside the courts and are closely linked to the efficiency, effectiveness and integrity of the other stakeholders involved in the justice system, such as the police, the prisons, the Attorney General's Office and the lawyers. Any reform effort therefore should be comprehensive and address the above identified areas in parallel. This has to be kept in mind also within the context of the implementation of the here proposed project.

Since the project focuses primarily on strengthening judicial integrity and capacity, it has to be ensured that measures which should be implemented under this project will be effective independently of eventual contributions or improvements within the domains of other stakeholders. However, in case such contributions or improvements should be an indispensable precondition for the impact of the respective measures the action plans which are going to be developed under this project should seek to ensure the necessary commitment of the respective institutions and/or donors.

Question 6

State what in your opinion are the three most important improvements needed in the socio-economic and/ or political environment?

<u>Most important socio-economic and political improvements</u>	Counts	Rank
Establish fair economic environment and labor market	10	1
Better service conditions (pensions, welfare, salaries)	9	2
Rule of Law/ Security/ Crime Control and Crime Prevention	7	3
Better and Free Education System (both youth/ adults)	6	4
Maintain the integrity, independence of and public confidence in the judiciary	6	4
Stable Government / Political stability	5	6
Political tolerance, Social Peace and Stability	4	7
Poverty alleviation/ Salary increases	4	7
Eradicate corruption and raise awareness about negative effects	4	7
More social facilities/ better infrastructure	3	10
Government serving the public/ closer to the public	3	10
Monitor political party financing	1	12
Appointment based on merit	1	12
Free Health Care	1	12
Improved Communication System	1	12
Decrease public wastage	1	12

According to the participants most urgent are those improvements that have to be made to the general living conditions of the Nigerian citizens at large. It was agreed that measures such as the establishment of a fair and enabling economic environment and labor market, including an increase of salaries.

Another priority, as identified by the participants, consists in strengthening the rule of law, increase human security and eradicate corruption. Besides this generic field of intervention, the participants also agreed on the importance of upholding the independence and integrity of and the public trust in the judiciary. Closely linked to issue of security are also the issue of political and social stability. Religious and social tensions are among the main causes for the precarious security situation in Nigeria.

Health and social care as well as improvements in the general infrastructure, including the communication system were rated as another field in which swift improvements are needed.

C. The Small Group discussions

On the second day of the workshop, the participants were divided into four groups in accordance with the four major impact indicators; viz – access to the courts; quality and efficiency of the trial process; public confidence in the courts; and response to complaints. Terms of reference were given to each group which included some secondary impact indicators that could assist the groups in their discussions. Groups were requested to focus on and develop such measures that can be addressed by the judiciary *sui motu*, bearing in mind resource constraints.

The objective was to enable the groups identify the priority areas to be addressed in relation to the four major impact indicators, as well as propose measures to address the problems identified, the institutional responsibilities and the monitoring of its implementation. Four important questions were also provided as a guide to enable them propose only realisable measures in relation to each impact indicator. Thus, participants were to consider the extent of control of the judiciary to the implementation of each measure, the availability of resources to implement such measures, the impact such measure are likely to have on the key problems and the likelihood of results being achieved within the next 18 months.

GROUP ONE

ACCESS TO THE COURTS

Group One, which was to discuss access to the courts as a primary indicator, had the following terms of reference:

Public understanding of basic rights and obligations (Example: Judges involved in public information programmes);

Financial Cost (Example: Reduce administrative burden on court users);

Courts sensitive to differing cultural norms (Example: Translate basic information into relevant local languages where not presently available; develop training programmes covering differing cultures);

Friendly environment for litigants, witness etc. (Example: Shade, seating, water for those waiting etc.);

Bail applications dealt with promptly (Example: Judges to note court file and eliminate need for registry staff to be involved);

Proportion of persons awaiting trial (Civil / Criminal) (Example: Increased coordination with prosecutors, police, prisons; enforce time limits; deny unjustified adjournments).

In considering access to justice, the group discussed in detail the six secondary indicators mentioned above with great enthusiasms. The Group also took into account the process guidance issued against each of the secondary indicators, in order to determine the realisability of the measures which they proposed. In conclusion, the group proposed as follows:

Public Understanding of Basic Rights and Obligations:

The group concluded that the chief judge is the proper person to brief the media on the rights and obligations of litigants and the workings of the court system, including issues of jurisdiction etc. In this regard, judges were enjoined to move away from the traditional notion that judges should shy away from publicity and therefore, not grant interviews or participate in public enlightenment activities. It was however cautioned that in educating the public on their

rights and obligations, judges should avoid controversial issues which are likely to be the subject of legal dispute. The group was of the view that this secondary indicator could be attained within the envisaged 18 months period.

Financial Cost:

The group noted that court fees vary from jurisdiction to jurisdiction. Whilst avoiding the temptation to fix uniform fees especially in view of its impracticability, the group noted that the fixation of court fees is within the powers of the Chief Justice and the chief judges. The Constitution of the Federal Republic of Nigeria empowers the Chief Justice and Chief Judges to make court rules which encapsulate the fixing of fees. Chief judges were therefore enjoined to take appropriate steps to remove obstacles to easy access to courts, particularly high fees. Other measures proposed include facilitating the appearance of witnesses, and the possible establishment of new courts. The Group also proposed the re-introduction of the old system where courts sat in sessions at the various localities in order to carry justice nearer to the people. The group also agreed that this measure is attainable within the envisaged 18 months period.

Differing Cultural Norms:

The group observed that Nigerian courts have the comparative advantage of using local languages peculiar to the locality of the court in order to transact its business, and that even where a litigant is not versed in the language of the court, an interpreter is made available. It was further noted that this practice is observed in all trial courts, from the lowest court to the high court, notwithstanding the fact that all court records are in English. The group however agreed that training and public enlightenment programmes in various local languages should be pursued.

Friendly Environment for Litigants, Witnesses, etc.:

The group observed that the current practice is for witnesses to be excluded from the court room, and that no waiting facility is provided in most of our courts. It was therefore proposed that new court buildings should include waiting rooms for witnesses, litigants, etc. It was noted that this measure is not immediately attainable, and that the implementation of the measure is not within power of the court, because the resources for such capital expenditures is controlled by the executive. However, the Group recommended that Chief Judges should explore the possibility of converting idle rooms in existing court structures into waiting rooms for witnesses, litigants as well as persons released on bail who are awaiting the perfection of their bail conditions.

Prompt Treatment of Bail Applications:

The group discussed the issue of bail and noted that to reduce congestion in the prisons, courts are encouraged to grant bail in respect of all offences other than those with capital punishment. The Group also appreciated the need to simplify the procedures for bail, but agreed that the accused and his sureties must go to the admin officers to sign the bail bonds, etc. The group noted the high number of persons awaiting trial amongst whom were those whose offences though bailable were not granted bail, and those who have been granted bail but could not perfect the bail conditions, etc. It was therefore resolved that bail should be made available to accused persons in all bailable offences unless there are special circumstances which will warrant the denial of such bail. The Group also emphasized the need for public enlightenment as well as proposed the need for a review of the laws so as to introduce "suspended sentences". It was also observed that the fines provided in our statute books are outdated and as such it was proposed that such fines should be reviewed to make them more meaningful.

Proportion of Persons awaiting Trial (Civil / Criminal):

Participants in the group extensively discussed the issue of coordination between justice agencies, especially in the area of criminal justice. It was noted that in all the states there exist a coordination mechanism in the form of Criminal Justice Committees which are comprised of the representatives of the Police, the Attorney-General's Office, the Courts and the Prisons Service. It was also observed that Chief Judges periodically carry out visits to prisons with a view to ascertaining the level of inmates awaiting trial and those who are being improperly detained. The Group therefore noted that the coordination mechanism necessary for the smooth running of the system is already in place. It was however resolved that participants should ensure the effective use of such mechanisms to reduce the proportion of persons awaiting trial, as well as the harmonious inter-dependence between the various criminal justice agencies, i.e. the investigative, the prosecution, the adjudication, and the penal/reformative.

In the area of civil justice, the Group observed that certain aspect of our procedures tend to encourage delays, especially in the filing of pleadings, the attendance of witnesses and even obedience to court orders. It was noted that in the area of civil law, it is within the purview of the judge to deal with contempt of his court or disobedience to court orders.

GROUP TWO

QUALITY OF THE TRIAL PROCESS:

Group Two which discussed Quality and Efficiency of the Trial Process was given the following terms of reference:

Decisions within the competence of the court to make (Example: Continuing education for judges);

Exercise of Procedural discretion (Example: Continuing education for Judges; Judges' Bench Books);

Exercise of substantive discretion (Example: Continuing education for Judges; Judges Bench Books);

Consistency, predictability and coherence in sentencing in criminal cases (Example: sentencing guidelines);

Merit-based judicial appointments and promotions (Example: Intensive consultations with relevant judges before appointments are made; Promote the use of academic writings and record of cases on appeal in assessing suitability for promotion);

Performance indicators (Example: number of procedural and substantive violations; failure to enforce time limits on e.g. interlocutory orders).

The Group discussed extensively and addressed all the secondary indicators referred to it. Participants' discussion centered on timeliness, the quality of justice, issues related to jurisdiction, consistency in sentencing, the performance indicators of individual judges as well as abuse of civil process. In the end the following measures were proposed:

Timeliness:

The Group noted that cooperation between agencies is vital to the achievement of a speedy justice process. As such, participants proposed that appropriate steps should be taken to increase the cooperation between agencies in the justice system. In addition, the Group observed that there has been a backlog of old outstanding cases which have accumulated as a result of the slow nature of the justice system. It was therefore proposed that in dealing with such cases, some form of prioritization is required. Incessant and unnecessary adjournments was also noted to be a major cause for the delays in the trial process. The need for strictness on adjournment requests was therefore stressed. It was further observed that failure by judges

to sit on time also contribute to the delays. The Group resolved that to facilitate timeliness in the trial process the performance of the individual judge needs to be monitored. Also, sustained consultation between judiciary and the bar should be encouraged.

The Group further observed that delays are also facilitated by some procedural rules. As such it recommended a review of such procedural rules in order to minimize delays and reduce potential abuse of process. Another problem affecting the timeliness of the trial process was the lack of an effective case management system. The Group recommended the need to put in place appropriate case management system that will take into cognizance the case loads, case types and length of such cases, so as to minimize undue delays.

In the area of criminal cases, the group observed that the lack of timeliness in the justice system has occasioned serious congestion in the prison system, which are populated largely by suspects awaiting trial. It was noted that apart from procedural delays, a major problem in this area has to do with non production of such suspects before the court for trial, resulting in some of them spending more years awaiting trial than the would have spent had they been convicted for the offence with which they were charged. In deploring this situation, the group recommended regular de-congestion exercises as well as prison visits with human rights organisations. The group also observed that some delays are caused because of lack of access to books by judicial officers, and recommended that appropriate measures are required to ensure increased access to books for judicial officers.

Jurisdiction:

The Group then discussed the issue of jurisdiction and in particular the need to clarify the jurisdiction of lower courts to grant bail. It was observed that such clarity is essential in order to understand the extent of such jurisdiction. The group expressed the need for public education especially on the issue of bail as it was noted that substantial number of the populace are ignorant of bail rights and procedures. It was however, the opinion of the group that such measures must be complemented with effective monitoring such as frequent court inspections as well as review of case files.

Consistency in Sentencing:

As a pre-requisite of quality of justice, the group discussed the need for consistency in Sentencing. To achieve this, the Group resolved that accurate criminal records are essential which must be made available at the time of sentencing. Most importantly, it was agreed that the development of a coherent sentencing guidelines is imperative as a measure that could enable achievement of consistency in sentencing.

Performance indicators of Individual Judges:

The Group deliberated on the performance indicator for individual judges, as a way of enhancing the quality of justice. It was the view of the Group that to determine the performance of judges it is necessary to assess whether such judges sit on time, whether they are making efforts to reduce backlog of their cases, the level of procedural errors they commit in the discharge of their functions, number of appeals allowed against their substantive judgements and the level of public complaints against their conduct in court. Participants in the Group stressed that these indicators could provide a definite and effective method of assessing the performance of Judges. In addition to the role of Chief Judges in monitoring the performance of individual judges, the Group also noted the role the National Judicial Council and the Independent Anti-Corruption Commission in this endeavour.

Abuse of Civil Process:

On the abuse of civil process, the group noted that the major the major areas of such abuse are in relation to ex-parte injunctions, improper proceedings in the absence of parties, judgements

in chambers instead of open court as well as abuse of process by vacation judges. The Group therefore expressed the need for caution by judges in the issuance of ex-parte injunctions and the imperative of serving the ends of justice by fair hearing to all the parties. Whilst stressing that judges should only give judgements in open court, it was also the view of participants in the Group that vacation judges should only hear genuinely urgent matters.

GROUP THREE

PUBLIC CONFIDENCE IN THE COURTS.

Group three handles the level of public confidence in the courts as a primary indicator for determining the integrity of the judicial system. The Group was given the following terms of reference:

Strengthen social control systems (Example: Establish Court Users Committees);

Public confidence in the exercise of judicial functions (Example: Explain decisions openly in ways or terms which the public can understand);

Fairness and impartiality (Example: Random case allocation; Conduct of judges in and outside the court.); and,

Political neutrality (Example: Avoid party memberships, fund raising meetings, political gatherings etc.).

Bearing in mind the need to prioritize the issues by laying emphasis to those indicators which could be achieved by the judiciary sui motu, the Group commenced discussions on the secondary indicators by proffering two basic assumptions; namely, that there is a direct link between conduct of the courts and public confidence in the courts; and that since the courts are accountable to the public, it is the responsibility of the courts to keep the public informed. Proceeding from this assumptions, the Group raised five priority areas which needed to be addressed. These were:

- ◆ the conduct and life-style of some judges (judicial arrogance);
- ◆ inadequate funding for the judiciary;
- ◆ irregular appointments;
- ◆ false complaints against judges which seem to take advantage of the inability of the judges to defend themselves; and,
- ◆ lack of timely information about what happens in court in such a way that the public could understand.

Strengthen Social Control Systems:

On the need to strengthen social control systems, the Group examined the current system of public complaints by court users. It was the view of the Group that there should be prompt and effective method of dealing with complaints by court users. In this regard it was recommended that Complaints Committees be established in each court and that complaints received should be expeditiously dealt with.

Public Confidence in the Judiciary:

The Group noted that that there is a direct link between the conduct of judges and other court staff and public confidence in the judiciary. On the conduct of judges, the group cautioned that judges should avoid exhibiting judicial arrogance by behaving as if they are unaccountable. It was the view participants that judges are accountable to the people and that it is for that reason that a succinct code of conduct was put in place. It was therefore recommended that Chief Judges should ensure a strict enforcement of the code of conduct as

well as the dissemination of such code of conduct to the understanding of the judges and the general public. It was also recommended that a strict monitoring of other court staff is essential in order to ensure that they keep to the tenets of their various responsibilities.

Another aspect that will enhance public confidence in the courts, according to the Group, would be keeping the public informed about what happens in the courts. Public enlightenment is a necessary tool which the courts could effectively employ in winning public confidence.

Fairness and Impartiality:

Fairness and impartiality were identified as necessary catalysts to public confidence in the courts. It was the view of the Group that the conduct of judges both in and outside the court determines a great deal the level of confidence, which the public could repose in the courts. Judges must not only be fair and impartial but must be seen to have been so by the general public. On the part of the Chief Judges, random case allocation and fairness in such case assignments was also seen to be essential.

Political Neutrality:

The issue of political neutrality as a necessary pre-requisite to the independence and integrity of the judicial system was also discussed. It was the view of the Group that judges must not be seen to partake in politics or be in political associations, meetings or gatherings. Indeed, the Group even cautioned that Chief Judges as well as other judges must be cautious in the way they relate with the executive, so as not to undermine the cherished concept of separation of powers and judicial independence. The Group resolved that except where judges have a specified role to play, they should avoid delving into executive functions.

Irregular Appointments:

The Group discussed the need to ensure that only qualified and competent persons of Integrity are appointed as judges. The system of appointment of judges was discussed by the Group and it was the view of participants that the current centralized system in which the Judicial Council handles the appointment is quite good, as it has helped a great deal in preventing the appointment of judges from being politicized. It was the feeling of the Group that due diligence must be exercised in recommending persons for appointment to the bench, in order to prevent irregular appointments or appointment of incompetent persons or those of questionable integrity.

Inadequate Funding for the Judiciary:

Although the issue of funding is one that is beyond the purview of those indicators which the judiciary could handle *sui motu*, the Group felt that adequate funding is central to the effective performance of the judiciary as well as the preservation of its independence. The Group noted that whilst the other two arms of government to a large extent received adequate resources required for their functions, the judiciary at all times remained starved of the requisite funds for its effective functions. It was the view of participants that the judiciary is yet to attain its independence in the area of resource allocation. This, the Group stressed must be pursued and achieved in order to provide for the necessary requirements of the third arm of government.

External Monitoring by the ICPC:

As a way of ensuring the integrity of the courts, judges and other personnel, the Group resolved that external monitoring of the system is required. In line with its mandate under the Corrupt Practices and Other Related Offences Act, 2000, the Group resolved that the Independent Corrupt Practices and Other Related Offences Commission, ICPC should

monitor the courts, the conduct of judges and other court personnel, and where necessary take appropriate steps to report erring judges or court staff to the National Judicial Council, appropriate Judicial Service Committee, or where necessary take appropriate measures in accordance with its mandate. It was also the view that the ICPC should make available its reports to the public.

GROUP FOUR

RESPONSE TO COMPLAINTS

Group Four, which discussed Response to Complaints as a primary indicator was given the following terms of reference:

Credible and effective Complaints System (Example: Publicize in courts how complaints should be made, to whom it should be made;

Enforcement of Code of Conduct (Example: Publicize Code of Conduct in Courts and Court Registries);

Creation of Public Communication Channels aimed at informing the court user about the procedural status of his/her complaints.

Establishment of a Credible and Effective Complaints System:

The Group commenced by emphasizing that a credible complaint system is an imperative way of holding the judiciary accountable to the general public which it should serve. For this reason, the establishment of such a system is not only necessary but that such a system must be well known to the public. The Group observed that although the current complaints system in which general public are to lay their complaints to the Chief Justice of Nigeria, the Chief Judges in the various states, the National Judicial Council or the Judicial Service Committees at the Federal and State levels are quite adequate, the general public is not enlightened on these avenues, as well as the procedures for making these complaints. Hence it was resolved that the current complaints system must not only be publicized in courts, but also how such complaints are to be made.

The Group also discussed the procedural steps that needed to be taken in relation to such complaints and expressed the need to give fair hearing to the judicial officer complained against and that the result of the decision of the National Judicial Council or Judicial Service Committee should be communicated to the complainant. Indeed, the Group went further to recommend that in cases of particular public interest, such decisions should be publicized.

Participants also discussed the need to discourage frivolous and malicious petitions, but stressed that anonymous complaints should be investigated and should only be disregarded if found to be lacking in substance.

Enforcement of Code of Conduct:

To complement a credible complaint system is the enforcement of code of conduct. The Group reasoned that the credibility of any complaints system lies in the ability of the system to effectively respond to such complaints by ensuring that such complaints of misconduct as have been proven are duly punished in accordance with the code of conduct, and the complainant informed of the action taken. This has the advantage of ensuring the effectiveness and integrity of the judiciary as well as building up accountability and public confidence in the institution. The Group emphasized the role of the National Judicial Council and the respective Judicial Service Committees in the effective enforcement of the Code of Conduct.

Participants also noted that although a succinct code of conduct for judicial officers is in place, the code is not sufficiently publicized to judicial officers and the general public. It was

resolved that this is essential for the judicial officers to comply, and for the public to hold them accountable for such compliance.

Creation of Public Communication Channels:

It was argued that the judiciary being a service institution, must relate effectively with the people which it is supposed to serve. Hence it was agreed that the judicial arm must move away from the old adage that judicial officers should only be seen and not heard. It was decided that in line with the modern thinking, judicial officers should participate in public education programmes to enlighten the people as to their rights and how to go about enforcing such rights. The Group however, cautioned that in performing such functions, judges should endeavour to restrict themselves to fairly straight forward issues and avoid controversial subjects that may call into question their independence and impartiality as judges. Further, the Group noted the tendency of the print media to misrepresent facts and opined that judges may consider the use of electronic media to handle such public enlightenment programmes, unless they are sure of the credibility of the print media concerned.

Training on Judicial Ethics:

The Group considered training on judicial ethics as a necessary element that will enhance the integrity of the judiciary. Participants therefore stressed the role of the National Judicial Institute in undertaking this endeavour. The Group further observed that such training should not be restricted to judges alone but other court staff that work with them. This the Group reasoned would ensure the integrity of the whole system.

D. The Indicators of Change – Measures and Impact Indicators for Assessing Judicial Integrity and Capacity

Based on the discussions held in the small groups it was possible to establish a list of measures which the Chief Judges considered essential and effective in increasing the access to, the quality of and the public confidence in the justice system. For each of the measures a set of indicators was identified which according to the participating judges would allow establishing if the measure had achieved its goal.

This list became the immediate basis for the refinement of the comprehensive assessment methodology. In particular the survey instruments for judges, lawyers and prosecutors, court users, court staff, both present and retired as well as businesses were reviewed with an particular focus of covering all the mentioned impact indicators.

By linking each single measure directly to a set of indicators it becomes possible to establish individual baselines; a necessary precondition for any truly meaningful monitoring exercise. The impact oriented design of the assessment will allow the fine-tuning and adjustment of each single measure and hereby greatly contribute to the achievement of the overall objectives of the project.

1. Access to Justice

Measure 1

Implementation of a relevant and up-to-date Code of Conduct for judicial officers

Impact indicators

- 1.1. Date of most recent review of Code of Conduct
- 1.2. Number of complaints received under the Code of Conduct
- 1.3. Percentage of complaints received that were investigated
- 1.4. Percentage of complaints received and investigated that were disposed of
- 1.5. Code of Conduct complying with best international standards
- 1.6. Percentage of officers trained on Code of Conduct

Measure 2

Enhance the public's understanding of basic rights and obligations dealing with court-related procedural matters

Impact indicators

The number of judges involved in public information programmes offered to the media and to the public in general

- 2.2. Availability of the judicial Code of Conduct to the public

Measure 3

Ease of access of witnesses in civil/criminal procedural matters Impact Indicator

Impact indicators

Number of instances in which witnesses provide evidence without attending court

- 3.2. Average time and expense for a witness to attend a case

Measure 4

Affordable court fees

Impact Indicator

4.1. Percentage of fees set at too high a level

Measure 5

Adequate physical facilities for witness attending court

Impact Indicator

Adequate Witness and Litigant's waiting room (taking advantage of any unused rooms where resources do not permit additional court physical space)

Measure 6

Itinerant Judges with the capacity to adjudicate cases outside the Court Building reaching distant rural areas

Impact Indicators

6.1. Number of Itinerant Judges

6.2. Availability of necessary transport

Measure 7

Level of Informed Citizens (and court-users in particular) on the nature scale, and scope of bail-related procedures

Impact Indicator

Number of courts offering basic information on bail-related aspects in a systematic manner.

Measure 8

Use of suspended sentences and updated fine levels

Impact Indicators

8.1. Passage of empowering legislation

8.2. Existing Number of cases where suspended sentences were applied

8.3. Number of Cases where fine penalties were applied

2. Quality of Justice

Measure 9

Timeliness of Court Proceedings

Impact indicators

9.1 Level of cooperation between agencies

9.2 Prioritization of old outstanding cases

9.3 Number of adjournment requests granted

9.4 Percentage of courts where sittings commence on time

9.5 Percentage of judges whose performance is monitored

9.6 Levels of consultations between judiciary and the bar

9.10 Procedural rules that reduce the potential abuse of process

9.11 Number of judges practicing case management

9.12 Type of case management being practiced

- 9.14 Regular-congestion exercises undertake
- 9.15 Regular prison visits undertaken with Human Rights NGO's and other stakeholders
- 9.16 Level of access to books for judicial officers
- 9.17 Functioning Criminal Justice and other committees (including participation by NGOs)

Measure 10

Courts exercising powers within their Jurisdiction

Impact Indicators

- 10.1 Number of judges/registrars trained/retrained in last year
- 10.2 Extent to which bail jurisdiction clear and implemented
- 10.3 Percentage of weekly court returns made and reviewed
- 10.4 Number of court inspections
- 10.5 Number of files called Up under powers of review

Measure 11

Consistency in sentencing

Impact indicator

- 11.1 Availability of criminal records at time of sentencing
- 11.2 Development of and compliance with sentencing guidelines

Measure 12

Performance of individual judges

Impact Indicators

- 12.1 Percentage of cases where sits on time
- 12.2 Backlog of cases? Going up? Down?
- 12.3 Number of errors in procedures
- 12.4 Number of appeals allowed against substantive judgments
- 12.5 Conduct in court
- 12.6 Number of public complaints
- 12.7 Level of understanding of Code of Conduct
- 12.8 Percentage of sentences imposed within the sentencing guidelines

Measure 13

Compliance with requirements of civil process

Impact Indicators

- 13.1 Number of cases where abuse of ex parte injunctions
- 13.2 Number of non-urgent cases heard by Vacation judges
- 13.3 Number of instances of proceeding improperly in the absence of parties
- 13.4 Number of chambers judgments (not given in open court).

Measure 14

Ensuring propriety in the appointment of judges

Impact indicator

14.1 Level of confidence among other judges

Measure 15

Raising level of public awareness of the judicial Code of Conduct

Impact indicators

15.1 Availability of Code of Conduct

15.2 Number of complaints made concerning alleged breaches

3. Public confidence in the courts

Measure 16

Public Confidence in the courts

Impact Indicators

16.1 Level of confidence among lawyers, Judges, litigants, court administrators, Police, general public, prisoners, and court users

16.2 Number of complaints (see above);

16.3 Number of inspections by ICPC

16.4 Effectiveness of policies regarding formal and social contact between the judiciary and the executive

16.5 Nature, scope and scale of involvement of civil society in court user committees

4. Improving our efficiency and effectiveness in responding to public complaints about the judicial process

Measure 17

Existence of credible complaints mechanisms

Impact Indicators

17.1 Complaints mechanisms which comply with best practice

17.2 Extent to which public are aware of and willing to use the complaints mechanisms

17.3 Readiness to admit anonymous complaints in appropriate circumstances

E. FOLLOW-UP ACTIONS

Review of follow-up action identified in the course of the Workshop:

1. Access to justice

1. **Code of conduct** reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately. *(Measure 1.1; 1.6; 16.4; 17.3) Action: Chief Justice of the Federation*
2. Consider how the **Judicial Code of Conduct** can be made more widely available to the public (e.g. hand outs, posters in the courts etc.) *(Measure 2.2) Action: Individual Chief Judges*
3. Consider how best Chief Judges can become involved in enhancing the **public's understandings** of basic rights and freedoms, particularly through the media. *(Measure 2.1) Action: Individual Chief Judges*
4. **Court fees** to be reviewed to ensure that they are both appropriate and affordable. *(Measure 4.1) Action: All Chief Judges*
5. Review the adequacy of **waiting rooms** etc. for witnesses etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose. Where rooms are not available explore other possibilities to provide shade and shelter for witnesses in the immediate proximity of courts *(Measure 5.1) Action: All Chief Judges*
6. Review the number of **itinerant Judges** with the capacity to adjudge cases away from the court centre. *(Measure 5.1) Action: All Chief Judges; Chief Justice of the Federation*
7. Review arrangements in their courts to ensure that they offer **basic information to the public on bail-related matters**. *(Measure 7.1) Action: All Chief Judges*
8. Press for empowerment of the court to impose **suspended sentences and updated fine levels**. *(Measure 8.1) Action: Chief Justice of the Federation*

2. Quality of Justice

1. Ensure high levels of **cooperation between the various agencies** responsible for court matters (police; prosecutors; prisons) *(Measure 9.2) Action: All Chief Judges*,
 2. **Criminal Justice and other court user committees** to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations. *(Measure 9.13; 16.5) Action: All Chief Judges*
- Old outstanding cases** to be given priority and regular decongestion exercises undertaken. *(Measure 9.2; 9.10) Action: All Chief Judges*
3. **Adjournment requests** to be dealt with as more serious matters and granted less frequently. *(Measure 9.3) Action: All Chief Judges; Chief Justice of the Federation*
 4. **Review of procedural rules** to be undertaken to eliminate provisions with potential for abuse. *(Measure 9.7) Action: All Chief Judges and Chief Justice of the Federation*
 5. Courts at all levels to commence **sittings on time**. *(Measure 9.4) Action: All Chief Judges*.
 6. **Increased consultations** between judiciary and the bar to eliminate delay and increase efficiency. *(Measure 9.6) Action: All Chief Judges*
 7. Review and if necessary increase the number of Judges practising **case management**. *(Measure 9.8) Action: All Chief Judges*

8. Ensure **regular prison visits** undertaken together with human rights NGOs and other stakeholders. (*Measure 9.12; 16.5*) *Action: All Chief Judges*
9. **Clarify jurisdiction** of lower courts to grant bail (e.g. in capital cases). (*Measure 10.2*)
10. Review and ensure the adequacy of the number of **court inspections**. (*Measure 10.4*)
Action: All Chief Judges
11. Review and ensure the adequacy of the number of **files called up under powers of review**. (*Measure 10.5*) *Action: All Chief Judges*
12. Examine ways in which the availability of **accurate criminal records** can be made available at the time of sentencing. (*Measure 11.1*) *Action: All Chief Judges and Chief Justice of the Federation*
13. Develop **Sentencing Guidelines** (based on the United States' model). (*Measure 11.2*)
Action: Chief Justice of the Federation
14. Monitor cases where **ex parte injunctions** are granted, where **judgements are delivered in chambers**, and where **proceedings are conducted improperly in the absence of the parties** to check against abuse. (*Measure 13.1; 13.3; 13.4*) *Action: All Chief Judges and Chief Justice of the Federation*
15. Ensure that **vacation Judges only hear urgent cases** by reviewing the lists and files. (*Measure 13.2*) *Action: All Chief Judges and Chief Justice of the Federation*

3. Public Confidence in the Courts¹⁶

1. Introduce **random inspections** of courts by the ICPC. (*Measure 16.3*) *Action: Independent Commission for the Prevention of Corruption.*

4. Improving our efficiency and effectiveness in responding to public complaints about the judicial process

1. Systematic registration of complaints at the federal, state and court level (*Measure 16.3*)
Action: All Chief Judges and Chief Justice of the Federation
2. Increase public awareness regarding public complaints mechanisms (*Measure 16.1*)
Action: All Chief Judges and Chief Justice of the Federation
3. Strengthening the efficiency and effectiveness of the public complaints system. (*Measure 16.3*)
Action: All Chief Judges and Chief Justice of the Federation.

¹⁶ A number of public confidence-building measures are also covered by initiatives in the other two categories – e.g. see 1, 10, 17 above.

III. OPENING SESSION

A. Welcome Remarks by Mr. Paul Salay, Country Representative of the United Nations Office for Drug Control and Crime Prevention

On behalf of the United Nations Office for Drug Control and Crime Prevention (ODCCP), of which I am the Country Representative for Nigeria, I would like to welcome you all to this workshop, gathering Chief Judges from all the States of the Federal Republic of Nigeria.

The two-day Workshop is the first in a series of activities that will be undertaken in the context of ODCCP project on "Strengthening Judicial Integrity and Capacity" in Nigeria. The project, which will last two years, is part of our Global Programme against Corruption.

The project aims at promoting the rule of law by enhancing the capacity and integrity of the justice system in Nigeria, in particular the judiciary. In so doing, the project is expected to contribute to the development of the necessary prerequisites for the successful recovery of assets stolen from the people of Nigeria by the various past military regimes. It is also expected to help prevent future transfers of funds of illicit origin.

The whole process will be led by the Honourable Chief Justice of the Federation, His Lordship Uwais, who will chair the proceedings during this Workshop. Let me take this opportunity to express ODCCP's gratitude to the Chief Justice of the Federation who has been always available whenever we needed him (even when we get the impression of exploiting his wisdom).

We are also grateful to His Excellency, the Minister of Justice and Attorney-General, Chief Bola Ige who, in spite of his many commitments, was always ready to assist. I will not forget that the Minister had to interrupt his leave in Ibadan to return to Abuja where he signed the project document on 5 September 2001 because of the importance that he personally attaches to this project.

I would like to also thank the Governments of the United States and the Netherlands which have provided the funds for the implementation of this project. This gesture is testimony of the donor's interest in the Improvement of the justice system in Nigeria and of its trust in ODCCP's capacity to deliver.

During this workshop, participants are expected to develop a framework for an Anti-Corruption Action Plan, select three pilot States and agree on a methodology for an assessment of the efficiency and integrity of the justice system. The issues to be addressed at the Workshop will set the pace for the rest of the project, which, we hope, will have an impact on the rule of law in the country as well as help enhance the image of Nigeria worldwide.

The approach that ODCCP is advocating is evidence-based and impact oriented. We hope that this will lead to significant measurable results within 18 months. At that point in time, we hope to conduct a realistic assessment in close collaboration with a local research institution.

From our side, we have put our best brains at the disposal of the project. Mr. Petter Langseth (Norway), who is responsible for the Global Programme against Corruption at ODCCP headquarters brings a wealth of expertise and experience. He has been the driving force pulling the whole thing together and has faced and overcome all types of difficulties. He is assisted by Professor Edgardo Buscaglia (USA) and Oliver Stolpe (Germany), both highly qualified and particularly devoted to the cause.

Our Office in Nigeria will continue to provide the required backstopping for a successful implementation of this project. Please feel free to call on us at any given moment. We will continue to work in close collaboration with all concerned authorities in Nigeria, in particular the Chief Justice of the Federation and the Minister of Justice.

Let me conclude by saying that ODCCP's role is to facilitate both the Workshop and the implementation of the project in Nigeria. As indicated earlier, the whole process is driven by the Chief Justice of the Federation. We all hope that the process set in motion this morning will help strengthen the independence of the justice system in Nigeria, to which ODCCP is firmly committed.

Thank you for your attention. God bless Nigeria and Africa.

B. Opening Remarks by Chief Bola Ige S.A.N., Attorney – General of the Federation, And Minister of Justice

The judiciary as the third tier of government is concerned with the organisation, powers and the workings of the courts. It is also concerned with the various personnel especially the judges, magistrates and other grades of judicial officers. The institutionalised machinery for the attainment of justice in any society is the judiciary. In recognition of the need to do justice in the Nigerian society, the Constitution of the Federal Republic of Nigeria 1999 proclaims as follows -

S.17(1) “The state social order is founded on ideals of freedom, equality and justice.”

S.17(I)(e) “The independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.”

The Judiciary is established to:

- ◆ defend the citizen by upholding the rule of law against tyranny or arbitrariness of the executive and administrative powers of government contrary to the constitution and other laws of the land and to protect civil rights and liberties.
- ◆ adjudicate in cases and matters between the citizens and any other person, authority or government with due observance of the rules of natural justice, free of bias and without undue delay; and
- ◆ protect the society at large from the consequences and acts of commission and omission of criminals and other offenders brought before them by imposing adequate and appropriate sentences.

If for any reason whatsoever, the ends of justice are endangered or sacrificed, there would be disenchantment with the social order.

An independent and honourable judiciary is indispensable to justice in any society. Without judicial independence the sanctity and inviolability of our temple cannot be maintained. Executive interference will hinder considerably the ability of the judge to decide important controversial issues on the basis of merit and principle rather than expediency. A judge should rise above passion, popular clamor and above all politics of the moment.

The entire court system is built on confidence, trust and assured expectation that justice will in the end be done. There is evidence of growing public disenchantment with the entire court system, Public confidence in the court system can only be regained if every judge lives up to his oath of office and administer justice to all manners of men without fear or favour, affection or ill will.

Corruption may be defined in terms of public office, public sector or institutional corruption - a term defined as “the perversion of integrity or state of affairs through bribery, favour or moral depravity. Corruption has exerted great costs on the development process. The following in the context of Nigeria is easily identifiable -the weakening of the institutional capacities of the state by eroding public confidence and promoting inefficiency; and It causes severe distortion in the efficient allocation of resources and often manifests as a form of re-distribution of money from the poor to the rich.

Apart from enacting legislation on corruption the Nigerian government has embarked on major structural and procedural reforms in the public sector designed to enhance transparency and accountability. For example in the award of public works contracts, existing guidelines on the constitution and powers of a tenders mechanism are rigorously enforced. The National Minimum Wage has been raised in realization of the fact that no serious effort to fight corruption can succeed with workers earning a slave wage. Regrettably, globalisation,

increased competition and the deregulation of many sectors have unleashed hyper-inflationary pressures on the domestic economy.

It is worthwhile though that our drive to privatize and reduce the strangulating effect of governmental regulation in the strategic sectors is informed primarily by the realization that heavy bureaucratization of the economy leads to wide discretion and the promotion of rent-seeking opportunities.

Let me say that our economic and investment partners in the developed world have a significant role in the anti-corruption crusade. Although they have consistently made accountability and transparency necessary indicia of governance, it would be helpful if at this forum we are able to articulate solutions to the problems of capital flight, financial havens and sustainable models of mutual legal assistance which pay special attention to the needs and circumstances of developing countries of the world.

This Workshop is a component part of an ambitious project on judicial integrity the agreement for which was recently signed between Nigeria and the UNDCP. The project is concerned with enhancing judicial integrity and reducing levels of judicial impropriety and corruption. The project will greatly complement the federal Government's campaign against corruption. It will cover the federal judiciary and three focal states (the selection of the three states will reflect the 3 main tribal areas Yoruba Hausa and Igbo. Also, there will be a preliminary assessment of the problems in the target institutions followed by several Integrity Fora at the federal level such as this, with the aim of developing a draft plan of action.

The foundation of the concept is traceable to a workshop jointly organized by the U.N. Center for International Crime Prevention (CICP) and Transparency International in Vienna, Austria between the 15th – 16th of April last year. The workshop which was attended by Chief Justices and senior Judges from eight African and Asian countries, considered means of strengthening Judicial Institutions and procedures as part of enhancing national integrity systems in the participating countries and beyond. The objective was to consider the design of a pilot project for judicial and enforcement reform to be implemented in relevant countries and also to provide a basis for discussion at subsequent meetings of the Group and at other meetings of members of the judiciary from other countries.

The workshop proposed several measures namely - Addressing systemic Causes of Corruption. For example,

There is need for the collation and exchange of information concerning the scope and variety of forms of corruption within the judiciary, and to establish a mechanism to assemble and record such data.

There is need to improve the low salaries paid in many countries to judicial officers and court staff.

There is need to establish in every jurisdiction an institution, independent of judicature itself, to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff.

There is need to institute more transparent procedures for judicial appointments.

There is need for the adoption of judicial codes of conduct and adherence to such code

Initiatives Internal to the Judiciary, such as –

A national plan of action to combat corruption in the judiciary should be adopted.

The judiciary must be involved in such a plan of action.

Workshops and Seminars for the judiciary should be conducted to consider ethical issues and to combat corruption in the ranks of the judiciary.

Practical measures should be adopted, such as computerisation of court files, in order to avoid the reality or appearance that court files are “lost” to require “fees” for their retrieval or substitution.

Initiatives External to the Judiciary

The role of the independent media, Bar associations, Prosecutors and Judicial Administrators should be acknowledged and enhanced. It should be acknowledged that judges, like other citizens, are subject to criminal law.

This workshop therefore is a major initiative towards the realisation of the laudable objectives of the judicial group.

We are fully supportive of these initiatives. I have made no secret of my vision for the transformation of the Justice sector particularly in regard to the revitalisation of its institutions and the reform of the laws. Indeed as I speak, a Committee of 14 chaired by Hon. Justice E. Ayoola is working flat out to produce before the end of the year a revised edition of the Laws of the Federation 2000. Also in the last week of November the Ministry of Justice will convene a national stakeholders Forum where issues of professionalism integrity and ethics of lawyers and judges will among other themes be x – rayed. Our ultimate goal is to map out a comprehensive national plan of action for the transformation of the administration of justice in Nigeria.

I hope that the results of this two day workshop will greatly assist us in our task and wish you all fruitful discussions. Thank you.

C. Keynote Address by Honorable Justice M.L. Uwais, GCON, Chief Justice of Nigeria

I wish to welcome you all to this important meeting. The object of the meeting is to examine and discuss the Draft Plan drawn up by the United Nations Centre for International Crime Prevention (CIPC) for Strengthening Judicial Integrity and Capacity in Nigeria.

The United Nations through its agencies, namely, the Centre for International Crime Prevention (CICP) of the office for Drug Control and Crime Prevention (UNODCCP) and the Interregional Crime and Justice Research Institute (UNICRI) drew up the Global programme against Corruption, the purpose of which is to assist Member States of the United Nations in their efforts to curb corruption. The Global programme is composed of two parts, the research component and the technical cooperation component. The former provides appropriate up-to-date background information and support through a global study of the phenomenon of corruption and the types of anti-corruption measures as well as their efficacy; while the latter is intended to build and/or strengthen the institutional capacity of the Member States to prevent, detect and fight corruption.

It is in pursuance of the Global Programme that Nigeria entered agreement with the CICP to carryout a project in Nigeria for strengthening the integrity and capacity of our Judiciary. The project is to be conducted for a duration of twentyfour months.

As a result, a Draft Plan for the project has been prepared by the CICP after its Representatives visited Nigeria last May. This meeting is convened to examine in detail the draft in order to make suggestions for amendments, additions or exclusion as considered necessary. As proposed by the draft plan, there is going to be a preliminary assessment of the problems of corruption and capacity in three selected pilot States to be identified by this meeting.

The CICP intends to implement the draft Plan by following the guidelines which were evolved by the meeting held in Vienna, Austria in April, 2000 by a high level International Judicial Group which was convened by the CIPC in collaboration with Transparency International. The group consisted of a former Vice-President of the World Court, and included Chief Justices from Bangladesh, Nigeria, Sri Lanka and senior Judges from Australia, India, Tanzania and Uganda..c

It will be remembered, as a preliminary step, the United Nations International Drug Control Programme (UNDCP) and the United Nations Development Programme (UNDP) in collaboration with our AntiCorruption Commission organized a Workshop last July for High Court Judges designated to try cases of corruption under the Corrupt Practices and Related Offences Act, 2000. The Workshop was found to be very useful to the participants and members of the Anti-Corruption Commission.

Perhaps, I should mention that under the auspices of United States Agency for International Development (USAID), the United States

Center for States Courts has been running a Programme in Nigeria which similarly includes eradication of judicial corruption. A pilot programme of the USAID is also being carried out in three pilot States which are Lagos, Ekiti and Kaduna States.

As can be seen, tremendous effort is being made in Nigeria to inter alia help us fight judicial corruption. For our part, the only way to show our appreciation, is to imbibe whatever we are taught and advised to undertake so that our Judiciary will be a model not only in Africa but the world over.

We will indeed remain grateful for the various assistance and programmes initiated by all the international agencies that are working with our Judiciary in order to improve its performance as well as quick access to justice with minimum or no delay.

In conclusion, Honourable Members of the National Assembly, Hon. Attorney-General of the Federation and Minister of Justice, My Lords, Your Excellencies, Distinguished Ladies and Gentlemen, I wish this meeting fruitful exchanges of ideas. I am confident that by the time it completes deliberations tomorrow, its aim will be achieved.

I thank you for the attention.

IV. PRESENTATIONS

A. Challenges facing the Commission and the Role of the Judicial Integrity Project by Hon Justice M.M.A. Akanbi Chairman of the Independent Corrupt Practices and Other Related Offences Commission

I consider it a great privilege to be invited to participate in this workshop being organized for the top echelon and cream of the Nigerian Judiciary. I thank the Chief Justice of Nigeria who has always been quite supportive of the Independent Corrupt Practices and Other Related Offences Commission since its inception. I also thank the authorities of the United Nations Office for Drug Control and Crime Prevention, who in collaboration with the Chief Justice have organized this workshop. I am delighted to be a part of the programme.

I am given to understand that the Workshop aims at “strengthening the institutional mechanism for enhancing judicial integrity, fostering greater access to the Courts and improvements in the quality of justice delivered in Nigeria”. This is certainly a move in the right direction. Indeed, there can be no better time than now for those of us who believe in a healthy, stable, economically buoyant and corrupt free Nigeria to discuss the challenges which have been confronting the Commission as a result of the massive and pervasive corruption which in the last two decades or so, made the international community to treat or look down on Nigeria as a pariah nation – lacking in honour and self respect.

Such was the situation at the time that Transparency International in their Corruption Perception Index, early this year, pronounced Nigeria as the most corrupt nation in the world. Even as at today, Nigeria occupies the last but one position down the ladder among the nations adjudged to be corrupt.

This indeed is a sad reflection of the level to which we have descended over the years. The situation therefore calls for a re-thinking and a change of heart especially on the part of purveyors and harbingers of corruption who have led this country to the brink of economic collapse and societal degeneration through corrupt practices.

The change of attitude being advocated must be brought about by the concerted efforts of all of us – the high and the low, the ruler and the ruled, and all who are in a position to take decision or have power or authority over others.

I cannot but re-iterate that the task of eradicating corruption and building a cleaner and transparent society rest squarely on the shoulders of each and all. For it must be clear even to the uninitiated that corruption has done a lot of damage to the socio-economic life of the nation. It has stunted growth and development and made even distribution of wealth impossible. It has succeeded in putting money into the pocket of plunderers of the nation’s wealth and denied the government legitimate tax earning and revenue from other legitimate sources, which could have been used in building a vibrant and self-sustaining economy.

Dr. N. Linton of Transparency International once said –

“Corruption undermines democracy by contributing to social disintegration and distorting economic system”.

And the President Chief Olusegun Obasanjo also stated in clear and unmistakable terms that corruption is antithesis to development and progress.

Indeed, crime analysts and criminologists have postulated that corruption is the *fons et origo* of all modern day crimes. Put differently, some say it is the illegitimate parent of all economic crimes, cheating, fraud, embezzlement, looting of public funds and ‘419’ offences etc. The irony of it all however is that many have come to accept corruption as a way of life, especially the cynics who opine that corruption can never be reduced let alone wiped out in this country and say with some air of authority that our present effort at building a transparent

society is sure to come to nought/not. They argue that this canker worm called corruption is so endemic and has eaten so deep into the fabric of the nation that like the Aids virus; it is highly infectious and not amenable to treatment. Their contention is that every department of Government institution has been affected and it is a waste of time to even attempt a cure. The only remedy, they maintain, is to learn to live with it.

That certainly, is a most dangerous proposition – a position that if taken is sure to spell total ruin for the nation and further destroy what is left of our battered image. The better view is for all and sundry to join the clarion call to fight corruption and help build and maintain the nation's integrity by instilling transparency and accountability in the public life of the nation and the citizenry. Indeed, efforts must be geared towards ensuring that the anti-corruption programmes of the present administration succeed. Now is the time for us to change and follow the worthy examples of Hong Kong and Singapore who have both “shifted reasonably quickly from being very corrupt to relatively clean” and have become quotable examples for other nations.

My Lords, I have so far not attempted a definition of the word ‘corruption’ for very obvious reasons. I have only deliberately tried to identify the ills of corruption and their ravaging and destructive effect on our economy and the society. For I think it will be impudent of me to attempt making and elaborate or copious definition of the word ‘corruption’. It suffices it to say however that corruption is a manifestation of lack of transparency and accountability in governance and in the exercise of the discretionary powers of a person invested with power or authority to take decision relating to some other person or body. The want of transparency may be due to several factors such as inherent negative characteristics, his life style and perception of human values. It may be due to the weakness of the system itself or the operative law or rules from which the power is derived. It may be the result of the cultural values of society or an unstable political and social environment and even poverty. A high rate of corruption is also bound to manifest itself in an environment where the leaders are glaringly corrupt or where society generally condone or encouraged the acquisition of ill-gotten wealth and where the laws or rules are so weak and ineffective that offenders are either not apprehended or are allowed to go unpunished.

I believe that all of you distinguished Judges and Jurists are very familiar with the Penal Code Law and the Criminal Code, which before the promulgation of the Independent Corrupt Practices and Other Related Offences Act 2000, were the two penal laws applicable in all cases of corruption and related offences. What however I am unable to say, in the absence of statistical data, is how many cases of corruption have in the last 10 to 15 years been tried or handled by your courts. The indices, however, show that while corruption, as a heinous offence, continue to thrive, reported cases of corruption in the modern law, reports are hard to come by.

At a recent workshop organized for designated Judges who have been recommended to handle corruption cases, not one of the Judges assembled, had ever handled or tried an accused person on a corruption charge. Evidently, Judges can only try cases brought before them and where no corruption charge is laid before a court, there can be no trial.

Perhaps, this may well be the reason why the perpetrators of the crime have been having a field day. Several reasons have been given for this sorry state of affairs. Some attribute it to the lack of political will on the part of the rulers or the inadequacies of the afore-mentioned legislations or an unwillingness of the law enforcement agencies who themselves are part of the problem to prosecute reported cases. It is perhaps well to also observe that several ad hoc or fire brigade measures put in place to deal with corruption cases by the various military regimes were seen as mere cosmetics since the political will so vital for the success of anti-corruption programme was lacking.

No doubt it is this kind of reasoning and the realization that unless some positive steps are taken to arrest the deteriorating situation, the crime of corruption will continue to escalate, and Nigeria may economically totter to its fall. Besides, apart from anything else, there was

the need to assure the international community that under the new democratic dispensation, Nigeria intends to make a clean break with the past, and was determined to fight corruption and all other related offences to a standstill.

This then was what informed and necessitated the promulgation of the Independent Corrupt Practices and Other Related Offences Act 2000 and indeed the establishment of the Commission, which was inaugurated on 29th September 2000. The Commission is made up of a Chairman and twelve (12) other Members drawn from the six geo-political zones. The duties of the Commission are clearly defined in Section 6 (a) – (f) as follows:

“6. It shall be the duty of the Commission: –

- (a) Where reasonable grounds exists for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases to prosecute the offenders;
- (b) To examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;
- (c) To instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatals;
- (d) To advise heads of public bodies of changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;
- (e) To educate the public on and against bribery, corruption and related offences; and
- (f) To enlist and foster public support in combating corruption.”

Broadly speaking, these duties can be classified as follows:-

(a) Enforcement (Investigation and Prosecution) – Section 6(a).

Prevention – Section 6(b), (c) and (d).

Education, Public Awareness and Enlightenment – Section 6(e) and (f).

Items (b) and (c) are being vigorously tackled by the Commission which since its inception have been engaged in series of activities to sensitize, educate and enlighten the public on the evils of corruption. Workshops, seminars, conferences, retreats and symposia have been organized at different places and different levels of operations either alone or in collaboration with other institutions that are committed to the eradication of corruption. The objective is to purge the generality of our people of the corruption mentality, appraise them of the risks involved in corrupt practices and the consequences that may be suffered by the perpetrators of the crime of corruption.

Programmes have also been organized on ethics and morality, and Ministries and Government departments and parastatals have been encouraged to set up ANTI CORRUPTION MONITORING UNITS and broad based coalition have been formed with some institutions who have chosen to be partners in this war against corruption.

1. The Challenges

It has not by any means been easy to face up to the challenges confronting the Commission in promoting the objectives for which it was set up. It takes time to change old habits. The corruption level has been quite high and it would require a lot of strategies and planning to transit from high-level corruption to lower level corruption equilibrium. So apart from a self-sustaining and self actualizing political will on the part of the political authority, the

Commission had to have on ground sound, solid and resilient infrastructural facilities and capacity building institutions which could stand the test of times and the onslaught of the hydra head monster of corruption with which it has to do battle.

The Act establishing the Commission empowers the Commission to operate as an independent body; and Section 3(14) specifically states that it shall not be subject to the control or authority of anybody. Unfortunately, for now, the Commission as of today has no independent source of financing its activities. And although it has political and operational independence to investigate even to the highest level of government, it has to depend on whatever government is able to allocate to it in the budget. Experience so far has shown that only about 25% of its budget proposal is often approved. This has made it impossible for the Commission for now to either create branch or zonal offices in the States. Operating from the headquarters in Abuja could be cost effective and a draw back on the activities of the Commission.

For any anti-corruption programme to succeed and make quick impact, it has to be well funded. Experience has shown that investigation, and even educating and sensitizing the populace on the evils of corruption could be quite an expensive venture. And this is a fact that must be recognized and addressed.

The staff of the Commission must be well catered for and paid adequate remuneration thus preventing them from succumbing to the temptation of looking elsewhere for illegal earnings.

2. Staff Strength

The staffing of the Commission has not been what it should be. Again, because of initial problem of funding and logistics, the Commission had to fall back on the Police, the Ministry of Justice and the Office of the Head of Service to provide pilot staff to help it take off. Some of them had to be sent back because they were considered not good enough for the nature of work the Commission has to be carrying out. The challenges posed by discernable weaknesses in staff position, would perhaps be less serious as soon as the current recruitment exercise is over and steps to train them is taken.

3. Housing/Accommodation

Efforts are being intensified to solve the challenges posed by lack of residential accommodation for staff and Members of the Commission. Some houses have been rented but still the paucity of funds made available in the budget, especially the capital budget has not made it possible for the Commission to purchase houses it could call its own. Members and staff are living in rented quarters. This is not a very happy situation but it is no doubt part of teething problem with which any pioneer institution has to grapple with.

4. Reforming Institutions of State and their Practices

On the long term, this is perhaps the most important target of the Commission. See section 6 (b), (c) and (d).

5. Public Enlightenment and Education

It is essential for the success of the Commission that it wins the support of the larger public. It will be the aim of the Commission to 'excite public outrage' on the evil effects of corruption and thereby win public acclaim.

6. Information Technology

A major vehicle of global collaboration is information technology. The sharing of information across borders is essential to anti-corruption battle. South Korea has developed a system where the information superhighway plays an important role in ensuring transparency in government dealings.

7. Global Collaboration

The war against corruption is a global war and Nigeria must enlist in it. We cannot fight it in isolation. Corruption is a 'borderless crime' and we need the collaboration of other countries and multinational agencies.

8. The Role of Judicial Integrity Project

I have deliberately not spoken of the challenges posed by the Judiciary in the anti-corruption project. This is because I realize that the judiciary has the capacity and the ability of making nonsense of any anti-corruption law and/or thwart the effort of the Commission. This is why judicial integrity is of paramount importance in any discussion relating to anti-corruption. The judiciary has the final say in these matters.

The Act, which created the Commission, confers on the judiciary extensive powers. It gives you the Chief Judges power to appoint designated Judges to hear and determine cases relating to offences committed under the Act. If the Judges appointed are men of honour and integrity, you share the credit with the Judges you have appointed. If they are corrupt or lacking in integrity, whether they are found out or not, you share in the blame. I hope none of the ones given to us is corrupt. As I stated to the designated Judges, the Commission has no means of knowing who amongst them is corrupt but I am prepared to presume that all the recommended Judges are men of integrity and honour.

Secondly, the Act gives the right of appeal from the decision of designated Judges to the Court of Appeal and from there to the Supreme Court. I believe this is as it should be. It is in keeping with the rule of law. The important thing to note is that from the general tenor of the Act, and by appointing designated Judges to deal with cases under the Act, it is evident that the under-pinning philosophy of the Act is to encourage Judges to give expeditious hearing to anti-corruption cases. This also I believe is in line with the maxim "justice delayed is justice denied". That apart, speedy hearing of corruption cases is also dictated by experiences of the past where delay has resulted in accused person getting off the hook through default, as for example, witnesses suddenly disappearing and trials of cases are stultified.

Significantly, at the appellate Court level, there is no time frame for hearing appeals or applications, and as such there is the fear that at that level, hearing may be delayed and the purpose of having designated Judges to speed up hearing may be defeated.

My Lords, you all know our lawyers, they can always file "frivolous and fanciful appeals" to delay and frustrate the hearing of cases; and unless care is taken, the purpose of promulgating the Act will be defeated. This is not to say that where there are reasonable grounds for appealing, that should be done. The point being made here is that both the courts of first instance and at the appellate court level, corruption cases should be given priority of attention. There is the need to assure Nigerians that with corruption, it is no longer going to be business as usual.

I do not think hearing corruption case expeditiously detracts from judicial independence. Delay in hearing such cases or frequent adjournments or shying away from taking decision, or passing the buck from one court to the other may send wrong signals, which will not augur well for the image of the judiciary.

The Judiciary is a crucial player in anti-corruption war and Judges must act well their part. The Commission has a stake in the preservation of the integrity of the Judiciary and thus judicial integrity project is most welcome as it would have the effect of promoting the integrity of its members.

My Lords, I know for a fact stories have been told of corrupt Judges, and reported cases went before Justice Eso's Panel and indeed before A.J.C. and now the NJC, have handled a few complaints of corruption. This is why this project is necessary. Let me however assure my Lords that allegations of corruption against Judges are not limited to Nigeria. A Judge was not long ago sentenced to prison in Sierra Leone. Judges have been sentenced to prison for corruption in Chicago and some States in America. The war against corruption is global and we cannot pretend not to know this. So, let us come out openly to discuss these matters, so that the bad egg even in the Judiciary or those who are not prepared to maintain a high standard of integrity can be flushed out and the good Judges who I believe are in the majority can continue to do the judiciary and their nation proud.

Finally, let me end by referring to this Statement from Transparency International wherein I suppose Jeremy Pope stated under the heading "RISK MANAGING"

"The Judiciary: There is a clear risk in any situation where a new body is being established under a new legal framework that a Judge may not appreciate the relevant jurisprudence and may declare the enabling Act to be unconstitutional. Obviously, such a decision (even if reversed on appeal) would cause severe disruption in the Commission's work and call into question its likelihood of success in the public mind. Therefore the approach of having a workshop with the Judges could be developed. The Chief Justice could also be invited to expedite the hearing of corruption cases to ensure that the Commission gets quick returns on its first rounds of prosecutions".

I believe that it is this kind of thinking that informed the gathering of distinguished Chief Judges of our land to attend this Workshop. Once more, I commend the CJN for making this possible. I believe that at the end of the day we shall all to a man rededicate ourselves to the promotion of integrity and the spread of the gospel of transparency, probity and accountability throughout the land.

God bless you all Thanks for listening.

B. Judicial Accountability and Judicial Independence by Mr. Jeremy Pope, Executive Director of Transparency International, U.K.

**The Court's authority -- possessed of neither the purse nor the sword —
ultimately rests on substantial public confidence in its moral sanctions.**

-Felix Frankfurter

An independent, impartial and informed Judiciary holds a central place in the realisation of just, honest, open and accountable government.¹⁷ A Judiciary must be independent of the Executive if it is to perform its constitutional role of reviewing actions taken by the government and public officials to determine whether or not they comply with the standards laid down in the Constitution and with the laws enacted by the legislature. In emerging democracies they have an additional task of guaranteeing that new laws passed by inexperienced executive or legislative branches do not violate the constitution or other legal requirements.¹⁸

Independence protects the judicial institutions from the Executive and from the Legislature. As such, it lies at the very heart of the separation of powers. Other arms of governance are accountable to the people, but the Judiciary – and the Judiciary alone -- are accountable to a higher value and to standards of judicial rectitude.

Core as the judiciary is to the maintenance of the Rule of Law and the upholding of its country's integrity system, the judiciary is none-the-less the most vulnerable of the trio of executive, legislature and judiciary. The judiciary commands no armies; it raises no taxes. As Felix Frankfurter has observed, its authority rests, not on the purse or the sword, but on substantial public confidence in its moral sanctions.

The judiciary, too, is often at the mercy of other agencies. When prisoners are not brought to the courts, they cannot be bailed; when lawyers or witnesses do not appear, cases cannot be heard; witnesses are sent away unheard, and told to return another day. Litigants give up in despair. And although the judges are there in court and ready to perform their functions, the blame for the delay gets heaped on their shoulders.

It is, too, at the mercy of mythologies. Lawyers can demand money from clients "to bribe the judge", and simply put it in their own pockets. When they lose the case they claim that their opponent must have bribed with a higher sum. Court staff can play act with lawyers, so that clients are taken into a judge's chambers when he is absent. The client is introduced to the so-called "judge" and sees the bribe actually being paid – and is an "eye witness", or so he thinks, to the corruption of the judiciary. Court clerks lose files and require money to find them, or withhold bail bonds until bribes have been paid. The Judiciary is therefore vulnerable because those around them are failing in their duties.

¹⁷ See official communiqué of the Commonwealth Law Ministers Meeting, Mauritius, 1993 (Commonwealth Secretariat, London). This chapter benefits from the writer's attendance at a closed meeting of senior judges from the common law tradition, held in Vienna in April 2000. The judges formed themselves into a judicial integrity "leadership" group and determined to develop coherent national judicial integrity strategies and to share information as these proceeded. The meeting was jointly organised by the United Nations Centre for International Crime Prevention and Transparency International.

¹⁸ For a discussion of the role of the courts in Brazil, see "Brazil: Judicial Institutions at a Crossroads" by Luiz Guilherme Miglória, *Economic Reform Today*, Number Four, 1993.

Senior judges are tarred by the conduct of judges at lower levels, where the greatest number of contacts with the public take place. Corruption at the lower levels is, in the public mind, extends right to the apex of the system.

In many countries, surveys suggest that the public regard their judiciaries as hopelessly corrupt. In the Ukraine it is said that fully seventy percent of all court decisions remain unenforced.¹⁹ In Venezuela, the Judiciary is so notoriously corrupt that polls show a majority of citizens would prefer to scrap the court system and build a new one from scratch.²⁰

How, then, can a judiciary respond? One might even ask, should it try? But then when public polls disclose, rightly or wrongly, that the public perceive the justice system as riddled with corruption, one can equally ask – what alternative does a judiciary have? Certainly that was the view of the Chief Justices' Leadership Group when it first met, In Vienna last year.

The Group saw it as crucial for the judiciary to assert and increase its independence, and to do this by increasing its own accountability. In this way that core foundation of moral authority and public support can be strengthened and consolidated.

Indeed, is there any clear alternative? We have seen in various parts of the world, governments who have conducted wholesale purges of their judiciaries – to the acclaim of their people, sickened by a judiciary it has seen as hopelessly corrupt. Yet, perhaps effective in the short term, this type of intervention is, of course, invariably fatal, undermining successor judges even before they have been sworn in to office. If a government can do it once, it can do it again. The result, inevitably, is a weak and subservient judiciary. This, I am sure, is something none of us in this room today would wish to see.

But isn't there an inherent conflict between independence and accountability? Doesn't accountability in fact serve to erode and to undermine independence?

The Group discussed this and were firmly and unanimously of the same view. The concepts of independence and accountability of a Judiciary, within a democracy, actually reinforce each other. Judicial independence relates to the institution – independence is not designed to benefit an individual judge, or even the Judiciary as a body. It is designed to protect the people.

¹⁹ “Controlling Corruption: A Parliamentarian’s Handbook” prepared by the Parliamentary Centre, Canada in conjunction with the EDI of the World Bank and CIDA, at page 44.

²⁰ In a seven-month campaign to excise the “cancer of corruption” from the Judiciary, the Chavez government suspended or fired 400 of the nation’s 1,394 judges. Scores – and perhaps hundreds – more judges may yet get the axe.

The judicial housecleaning has brought a positive response from the public, making it one of the most popular measures taken by Chavez, a former army coup leader who pledges a “peaceful revolution” for his oil-producing nation.

However, while removing judges in large numbers, the government has still not yet shown a willingness to entrust the judicial branch with enough money and autonomy to make it truly independent. Even the respected veteran law professor helping to lead the purge of judges admits that his efforts may not ultimately pay off. “What we are doing can disappear like grains of sand falling through my hand,” he said.

Venezuela desperately needs to expand its number of courtrooms, offer equal access to justice for the poor, create an effective system of public defenders, double the pay of judges to about \$6,000 a month, and close fly-by-night law schools that have created a glut of lawyers.

A crisis of law and order is becoming ever more apparent. Angry citizens have taken to lynching alleged murderers, rapists and car thieves on nearly a weekly basis somewhere in the country. Police tally an average of 21 murders a day, comparable to casualties in a nation at war. A vehicle is stolen in Venezuela every 10 minutes. ...

The Venezuelan courts deteriorated rapidly with the transition from military dictatorship to democratic rule in the late 1950s.... *Tim Johnson, The Miami Herald, May 1 2000*

Judicial accountability is not exercised in a vacuum. Judges must operate within rules and in accordance with their oath of office which reigns them back from thinking that they can do anything they like.

But, how can individual judges be held accountable without undermining the essential and central concept of judicial independence?

Individual judges are held accountable through the particular manner in which they exercise judicial power and the environment in which they operate.

Judges sit in courts open to public²¹;

They are subject to appeal;

They are subject to judicial review;

They are obliged by the law to give reasons for decisions and publish them;

They are subject to law of bias and perceived bias;

They are subject to questions in the Legislature;

They are subject to media criticism²²;

They are subject to removal by the Legislature (or by a supreme judicial council)²³; and,

They are accountable to their peers.

Accountability through the media raises special questions. It is one thing for the media to report on court proceedings, the judges' demeanour in court and the results of the cases they hear. It is quite another thing for the judiciary to engage in public debate. Increasingly, however, members of judiciaries around the world are coming to realise that the appearance of being aloof and above the fray can actually undermine their independence by feeding an uninformed view of judges and the role they play. Certainly, judges need to avoid being drawn in to controversies surrounding their decisions. They need to give judgments, which are clear, unambiguous and readily understood. However, there are wider questions concerning their role and function, which they can safely discuss to the benefit of all. In some countries, however, a concern that the press may misreport what they are saying has created a situation where judges only appear on radio and television, on programmes screened live and unedited.²⁴

Herein lies a very real danger to the judiciary where members are invited to be appointed to preside over Commissions of Inquiry. It provides protection where non-judges are also members of a Commission, as they can field questions in any subsequent public debate. Judges, too, by reason of their training and experience, are often uniquely well-equipped to perform such a role. But where a Judge is a sole Commissioner, the consequences of subsequent controversy can be extremely damaging.²⁵

²¹ In extraordinary situations it has been found necessary to have a "faceless" judge, guarding the judge's identity to protect him or her from retaliation, e.g. by drug traffickers in Colombia.

²² Some of the criticism is ill-informed and often goes unanswered because judges traditionally do not get involved in public controversies: sometimes it is simply because the judges have failed to explain their reasons clearly enough.

²³ Removal from office relates to the concept of independence, as it touches on security of tenure.

²⁴ Such is the case with Justices of the Supreme Court of the United States.

²⁵ One such disaster occurred in New Zealand. Justice Peter Mahon was appointed to conduct a sole inquiry into an air disaster. His finding that he had been told "an orchestrated litany of lies" by the airline was attacked by the then Prime Minister (Robert Muldoon) that the Judge was effectively forced to resign from office in order to defend himself. The Judge was subsequently honoured internationally for the thoroughness of his inquiry, but his career as a Judge had been ended.

Until very recently it was near heresy to raise the question of the accountability of the Judiciary. At best, this was seen as implying that the practice of “judicial elections” was legitimate, whereas most of those in the common law tradition have a repugnance for the notion of judges running for public office and see this as conflicting with their duty to protect the weak and the marginalised. At worst, this was regarded as arguing for the Executive to be given a licence to intrude into the judicial arena in ways that could only be damaging.²⁶

Now, however, the realisation is growing that accountability (but not accountability through the ballot box), far from eroding independence, actually strengthens it. The fact that individual judges can be held to account increases the integrity of the judicial process and helps to protect the judicial power from those who would encroach on it.

But even if the rules of judicial conduct are articulated and accepted, are they enforced? If not, there may be a perception that there is no risk if a judge deviates from them. But how, then, *should* they be enforced?²⁷

One would not want to give more power to the Executive – whose decisions the courts review. Nor to The Legislature, as that would be to draw judges into the game of politics. Appointment by the elected representatives of the people can emphasise that senior judges are appointed by representatives of the people and, in the event of a formal impeachment, are removable by them.

Likewise there is a need to be cautious about individual judges being accountable to a Chief Justice – a judge in Hong Kong was once removed by a Chief Justice only to have his decision reversed by the Privy Council (Hong Kong’s highest court) which pointed out that even a Chief Justice has to comply with the law.

²⁶ For example, in Georgia (where unqualified judges were a problem), the lower court judges were all subjected to written examinations, and the more incompetent of them were then removed. While each example may have been effective in the short term, the degree of Executive interference was such that it must inevitably cast a long shadow over the emergence of a Judiciary who the public can view as being independent of the Executive, and thus capable of upholding the Rule of Law.

²⁷ *A determined approach in Karnataka* -- The approach to promoting judicial integrity in the Indian State of Karnataka with a population of 30 million, is two-fold. From the date of a judge’s appointment (on merit) he or she attends training in ethics, management, transparency, and public expectations.

The new judge declares his or her assets and liabilities (including loans) before taking up the appointment and repeats the declarations every year thereafter. Declarations of assets are made to the High Court Registrar, who maintains computerised files. The disclosures includes family members (wife, son, daughter, and parents if still alive) The Vigilance Commission (the government’s anti-corruption commission) inspects the returns and makes discreet inquiries about the declarations. Members of the public have access to the declarations. The whole procedure is governed not by an act of the Legislature but by the High Court Rules, i.e. made by the judges themselves.

The question of improving conditions of service receives constant attention, and there is a “self improvement scheme” whereby judges at regular intervals attend meetings to interact with each other and to prepare research papers on topics of interest.

At the same time there are checks on the system itself. Cases are allocated to judges on a random basis, and as late in the day as is practicable. When complaints are received, these are checked where they relate to continuing patterns of behaviour, and a registrar has even disguised himself to go to a public registry to check on how members of the public were being treated by his own staff – and disciplinary action resulted. As a consequence, reforms have been introduced which streamline the availability of information about cases and files, bypassing the lawyers and the court officials who previously had been insisting on payment before they would tell a person the stage his or her case had reached or when it was to be heard in court.

The disposal of old cases was continuously monitored to ensure that the numbers were declining, with incentives being provided for the judges who are making significant progress in clearing backlogs.

Peer pressure is important, but independence from colleagues in a collegiate court can also be very important. In an appellate court each judge has to be able to keep his or her mind truly independent of colleagues.

Fair procedures and due process are needed for judges who are accused of impropriety.

There is a need for some system for dividing serious misconduct (which may call for removal) from the minor matters (for example, lack of taste, a need for counselling, a lack of understanding and needing a quiet word rather than an open reprimand).

The vulnerabilities of the Judiciary

The primary area of vulnerability in some countries is the Executive, quite simply, refusing to comply with court orders and simply ignores awards of damages. When the Executive ignores the Judiciary, public confidence quite naturally slumps. There may be little that a Judiciary can do. Certainly, proceedings for contempt of court can result in the officials simply ignoring summonses to appear, and matters can be made even worse. At such times the Judiciary must look to law and bar associations, the mass media, civil society in general, enlightened and responsible legislators and, above all, the Minister of Justice or Attorney General, who should be the Judiciary's champion at times like these.

The government's Chief Law Officer should consider it his or her solemn duty to defend members of the Judiciary against intemperate and destructive criticism by fellow members or by the government and he or she should actively promote a culture of compliance with court orders. The head of the Judiciary also has an important role to play in speaking on behalf of all of the judges in those rare cases where a collective stand must be taken.²⁸ But it is also important for the judiciary to build a solid platform of support within the community at large, thus laying a foundation for its own protection when judges act fearlessly and the executive seeks to exact retribution.

There are, of course, less dramatic ways in which an Executive will try to influence the Judiciary and these are many and varied. Some are subtle, such as awarding honours or ranking judges in the hierarchy at state occasions. Some may be impossible to guard against, while others are simply blatant – such as providing houses, cars, and privileges to the children of judges. Others include failing to repair houses, so that upholding the Rule of Law can quite literally let in the rain, or blocking payments of pensions to a disliked judge when he or she retires.

Perhaps the most blatant abuse by the Executive is the practice of appointing as many of its supporters or sympathisers as possible to the court. The appointment process is therefore a critical one, even though some governments have found that their own supporters develop a remarkable independence of mind once appointed to high office.

To combat this independence, the Executive can manipulate the assignment of cases, perhaps through a compliant Chief Justice, to determine which judge hears a case of importance to the government. It is therefore essential that the task of assigning cases be given not to government servants but to the judges themselves, and that the Chief Justice enjoy the full confidence of his or her peers.

When a particular judge falls from Executive favour, a variety of ploys may be used to try to bring the judge to heel. He or she may be posted to unattractive locations in distant parts of the country; benefits, such as cars and household staff, may be withdrawn; court facilities may be run down to demean the standing of the judges in the eyes of the public and to make their already arduous jobs even more difficult; or there may be a public campaign designed to

²⁸ Statements of explanation by members of the Judiciary can themselves create further difficulties, as in the case in Israel where Justice Arbel was sued personally in a civil suit by a person named in it. Stated in Jerusalem Post, 10 December 1999.

undermine the public standing of the Judiciary. Such a campaign may be aimed at criticising certain judges or claiming that a mistake was made when they were selected for appointment. In such instances, judges are not in a position to fight back without hopelessly compromising themselves and their judicial office. To minimise the scope for this, responsibility for court administration matters, including budget and postings, should be in the hands of the judges themselves and not left to the government or civil servants.

When it comes to public attacks (and they take place in both well-established and newer democracies), judges must not be, nor consider themselves to be, above public criticism. They cannot claim, at one and the same time, to be guarantors of rights to freedom of speech and yet turn on their critics. Nor should they attempt to muzzle public debate about problems within the Judiciary itself, as has been the case in some countries when the issue of corruption in the judicial process has arisen.²⁹

In Israel, the Supreme Court President has gone so far as to issue a memorandum to judges stating that they may not individually file complaints against those who criticise them, but that these must go through his office so that he can act as a filter. Defenders of free speech, he said, have a responsibility to be consistent. "If we as a court say that criticism is good for a government, it is also good for us. We must be even more open to criticism than others."³⁰

Much criticism can hurt, especially those judges who do their very best in difficult, and at times, hazardous situations. Criticism should be restrained, fair and temperate. In particular, politicians should avoid making statements on cases, which are before the courts and should not take advantage of their immunity as Legislators to attack individual judges or comment on their handling of individual cases.

At the lower level of the court structure, a variety of corrupt means can be used to pervert the justice system. These include influencing the investigation and the decision to prosecute before the case even reaches the court; inducing court officials to lose files, delay cases or assign them to corrupt junior judges; corrupting judges themselves (who are often badly paid or who may be susceptible to promises of likely promotion); and bribing opposing lawyers to act against the interests of their clients. A review of court record handling and the introduction of modern tracking methods can go a long way to eliminating much of the petty corruption which plagues the lower courts in many countries.³¹

Clearly, these corrupt practices call for action on several fronts. Those responsible for the investigation and prosecution of cases must impose high standards on their subordinates; court officials should be accountable to the judges for their conduct and subject to sanction by the judges where, for example, files are lost; and, the Judiciary itself must insist on high ethical standards within its own ranks, with complaints being carefully dealt with and, where necessary, inspection teams visiting the lower courts to ensure that they are functioning properly.³²

²⁹ For example, in Bangladesh, after TI-Bangladesh had conducted a public survey in which the lower Judiciary emerged extremely badly, the Magistrates called on the government to take action against the NGO. However, the country's President, himself a former Chief justice, entered the debate, stating that if only a part of the survey results reflected reality, the lower Judiciary had very serious problems to deal with.

³⁰ Quoted in the Jerusalem Post, 10 December 1999. Since introducing the requirement, the Judge stated that he had not allowed any to proceed.

³¹ Delay is a common indicator of levels of corruption. A popular joke in Brazil tells of a woman who applied to the court for permission to have an abortion because she had been raped – by the time the application was granted her son was ten years old!

³² In very serious cases, the use of "integrity testing" may be unavoidable, even in the context of members of the Judiciary. It has been used in this way in areas of the United States and in India where there have been persistent and credible allegations of corruption made against individual judges.

The law societies and bar associations must also be encouraged to take stern action against members who behave corruptly. The fact that a system may itself be corrupt does not mean that the lawyers themselves have to become part of such a system.

It is commonly considered unfair for lawyers to be disbarred for extensive periods for having practised law in a corrupt environment where they were obliged to resort to petty corruption themselves to gain services to which their client had a lawful right but was being illegally obstructed from obtaining, most commonly for processing services.³³ This approach needs to be re-examined in view of the damage such tolerance does to the legal system. Although it may, in some situations, be an unavoidable necessity for a client to pay a backhand to the gate-keeper, one questions whether the lawyer need ever professionally be in such a position.

A final point of vulnerability for the judge is after his or her retirement. Judicial pensions tend to be less than generous, and the practice in some countries of "rewarding" selected judges with diplomatic posts on their retiring from office, is clearly one which is open to abuse if not handled in a very transparent fashion.

Appointments to the Judiciary

The duty of a judge is to interpret the law and the fundamental principles and assumptions which underlie it. While a judge must be independent in this sense, he or she is not entitled to act in an arbitrary manner. The right to a fair trial before an impartial court is universally recognised as a fundamental human right.

Individuals selected for judicial office must have – and be seen by the community to have – integrity, ability, and appropriate training and qualifications in the field of law. The selection process should not discriminate against a person on the grounds of race, ethnic origin, sex, religion, political or other opinion, national or social origin, property, birth or status.

The ways in which judges are appointed and subsequently promoted are crucial to their independence. They must not be seen as political appointees, but solely rather for their competence and political neutrality. The public must be confident that judges are chosen on merit and for their individual integrity and ability, and not for partisanship.

However, if the public feels that the appointment process is still too "clubby," or, too tainted by political considerations, then a non-legal establishment may need to be introduced. While individuals from such an establishment may not have the professional assessment ability, they may be able to prevent the more overt types of abuse.

The promotion of judges should be based on objective factors--particularly ability, integrity and experience. Promotion should be openly seen as a reward for outstanding professional competence, and never as a kickback for dubious decisions favouring the Executive. The selection of judges for promotion should involve the judges themselves and any say that the Executive might have should be minimal. The prospect of promotion as a reward for "being kind" to the Executive ought never to be a realistic one.

Removal for cause

The removal of a judge is a serious matter. It must not be able to occur simply at the whim of the government of the day, but rather in accordance with clearly defined and appropriate procedures in which the remaining Judiciary play a part. It is also essential that the courts have appropriate jurisdiction to hear cases involving allegations of official misconduct. If not, removal of a judge can undermine the concept of judicial independence. Yet, judges must

³³ This would be corruption "according-to-rule," where a person is demanding a bribe in order to perform a duty which he or she is ordinarily required to do by law, as discussed in Chapter 1. It is not to suggest that corruption by a lawyer to obtain benefits "against the rule" could ever be justified from a professional standpoint.

always be accountable, otherwise the power vested in them will be liable to corrupt. A careful balance must be struck. Judges should be subject to removal only in exceptional circumstances, with the grounds for removal to be presented before a body of a judicial character. The involvement of the senior Judiciary itself in policing its own members in a public fashion is generally regarded as the best guarantee of independence.

It is axiomatic that a judge must enjoy personal immunity from civil damages claims for improper acts or omissions in the exercise of judicial functions. This is not to say that the aggrieved person should have no remedy; rather, the remedy is against the state, not the judge. Judges should be subject to removal or suspension only for reasons of incapacity, or behaviour, which renders them, unfit to discharge their duties.

It is customary to make a clear distinction between the arrangements for the lower courts where run-of-the-mill cases are heard, and the superior courts, where the judges are much fewer in number, have been more carefully selected and who discharge the most important of the judicial functions under the constitution. It is incumbent on the senior judges to use their independence to ensure that justice is done at lower levels in the hierarchy. Lower-court judges are customarily appointed in a much less formal fashion and are more easily removed for just cause. However, neither higher nor lower-court judges are "above the law". There must be sanctions for those who may be tempted to abuse their positions or display gross professional incompetence.

Tenure of office and remuneration

As far as the senior judges are concerned, it is implicit in the concept of judicial independence³⁴ that provision be made for adequate remuneration, and that a judge's right to the remuneration not be altered to his or her disadvantage.³⁵ If judges are not confident that their tenure of office, or their remuneration, is secure, clearly their independence is threatened.

The principle of the "permanency" of the Judiciary, with no removal from office other than for just cause and by due process, and their security of tenure at the age of retirement (as determined by written law), is an important safeguard of the Rule of Law. It is generally desirable that judges must retire when they reach the stipulated retiring age. This reduces the scope for the Executive to prolong the tenure of hand-picked judges whom they find sympathetic while reducing the temptation, on the part of the judge, to court Executive, or other appointing authority, "approval" for re-appointment as the date of retirement nears.

There is ample scope in most countries for corruption to flourish within the administration of the courts. Corruption ranges from the manipulation of files by court staff to the mismanagement of the assignment of cases.

As a result, there has been a tendency for countries to empower their Judiciary to manage the courts and an operational budget provided by the state. A political figure is formally responsible for the budget to the legislature, which approved the funds. This approach was endorsed by the fifty independent countries of the Commonwealth in 1993, whose law ministers noted that to provide judiciaries with their own budgets "both bolstered the independence of the courts and placed the Judiciary in a position to maximise the efficiency with which the courts operate."³⁶

³⁴ There have been a number of important international pronouncements on the independence of the Judiciary, several of which appear in the Best Practice Section.

³⁵ In some countries faced with dire economic problems, judges have accepted a reduction in salaries in line with those of all other public servants, but this has usually been done on the basis of the judges "requesting" similar treatment, rather than it being done to them unwillingly.

³⁶ See Commonwealth Law Ministers Meeting Communiqué, Mauritius, 15-19 November 1993 (available from Commonwealth Secretariat, Marlborough House, London SW1, United Kingdom).

Codes of conduct

Given that – at least up to the point where impeachment by the Legislature comes into play - judicial independence is best served by individual accountability being handled by the judges themselves (with at most a minority of involvement of others), how can impartiality and integrity be maintained?

One option is to establish a formal machinery. The other is for the senior Judiciary to accept the task for itself. The most potent tool would seem to be an appropriate code of conduct. This should be developed by the judges themselves, and provide both for its enforcement and for advice to be given to individual judges when they are in doubt as to whether a particular provision in the code applies to a particular situation. Codes of conduct have been used to reverse such unacceptable practices as when the sons and daughters of judges appear before their parents as lawyers to argue cases. While in a country where there is considerable trust in the Judiciary, such an appearance might not cause any concern, in a country where there is widespread suspicion that there is corruption in the Judiciary, such a practice takes on an altogether different appearance.

What values should a code uphold? The Judicial Leadership Group, meeting in Bangalore in early 2001, considered these values should be:

Propriety (e.g. refraining from membership of political parties; non-involvement in party fundraising)

Independence (e.g. reject attempts to influence decisions where these arise outside the proper performance of judicial duties)

Integrity (e.g. a judge's behaviour must be above reproach in the view of reasonable, fair-minded and informed people)

Impartiality (e.g. a judge must disqualify himself in any proceedings where there might be a reasonable perception of a lack of impartiality)

Equality (e.g. a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice towards any person or group on irrelevant grounds)

Competence and diligence; (e.g. a judge shall keep himself informed about relevant developments of the law) and

Accountability. (e.g. institutions and procedures established to implement the code shall be transparent so as to strengthen public confidence in the judiciary and thereby to reinforce judicial independence.)³⁷

The code – which has been circulated to the Meeting - gives a series of examples of specific ways in which each value is defended and promoted, drawn from codes from throughout the common law world, developed and developing, as well as from international instruments. As such it is believed to be the leading judicial conduct code, and as such warrants being compared with national and state Nigerian codes of conduct as a means for ascertaining whether there are some respects in which the Nigerian codes may warrant revision or updating in the light of contemporary prevailing best practice.

Codes should also be seen as “living documents”. They are not wallpaper or instruments with which to decorate a website. They should be periodically reviewed and updated. When, for instance, it is found that some senior judges have fallen into the habit of attending the airport when the head of their state comes and goes, and when this is adjudged as being inappropriate and giving a public appearance of subservience to the Executive, the Code of Conduct can be revised to give guidance to the effect that this is inappropriate conduct. When the judges cease to pay homage in this way and their Governor complains, they are then able to point to

³⁷

See the report of the meeting, www.transparency.org.

the Code and explain that such conduct is no longer permissible. Chief Judges in particular must, through their conduct, assert their position as heads of their own arms of government.

The task of this Workshop is a challenging one. It is to move from a situation where the Judiciary is a “victim” – of non-performing agencies, of unreliable lawyers and court staff, of defiant Executives – to a position where the Judiciary takes charge of its destiny. Where it examines areas where it has control, where it has impact and where it can make a difference. Where, by activism and enlightenment, the Judiciary can build a confident, supportive public and an effective, fair and professional judiciary committed to upholding the Rule of Law. If you can, tomorrow, embark on this journey with imagination and determination, you will win the unbounded blessings of generations of Nigerians to come.

C. Background to the Strengthening Judicial Integrity and Capacity Project in Nigeria by Dr. Petter Langseth, Programme Manager, ODCCP-Global Programme against Corruption

1. United Nations Centre for International Crime Prevention – Global Programmes

In April 1999, at the Eighth Session of the Commission on Crime Prevention and Criminal Justice (27 April to 6 May 1999) ³⁸, the Centre for International Crime Prevention presented to the international community three global programmes to counter corruption, trafficking in human beings and combat transnational organized crime, which went under the names of Global Programme against Trafficking in Human Beings, Global Programme against Corruption and Global Studies on transnational organized crime, later renamed Global Programme against Transnational Organized Crime.

The three global programmes were designed to mirror the thematic areas covered by the ongoing negotiations for a United Nations Convention against Transnational Organized Crime, its Protocols thereto.

After two years of implementation of the global programmes and in the light of the recent approval by the General Assembly of the United Nations Convention against Transnational Organized Crime and its supplementary Protocols in 2000 and 2001, and in view of the impending General Assembly decision to establish an ad hoc open-ended committee for the elaboration of an international instrument to combat corruption, CICP revised the global programmes to lay the ground for the future.

The initial global programmes, jointly developed by the UN Centre for International Crime Prevention (CICP) and UN Interregional Crime and Justice Research Centre (UNICRI) included a range of programme areas and activities, envisaging substantial financial contributions from the international community for their implementation ³⁹.

Two years of praxis have provided CICP with important results and lessons that need now to be reflected in the revised global programmes. One of these lessons is that, while Member States widely welcome and supported the establishment of the global programmes, the donor community was not ready to come forth with all the resources envisaged in the global programme documents. However, the contributions received have enabled the Centre to start research activities and pilot technical cooperation projects in countries in Africa, Asia, Eastern Europe and Latin America.

Another important element arising from the experience of the past two years, and reflected in the revised global programme documents, is that global programmes need to be focused on those thematic and expert areas in which CICP possesses a comparative advantage. Such a re-focussing and specialization effort is presented under the individual headings for each global programme.

Given the highly political and sensitive nature of the themes covered by the global programmes, the development and implementation of technical cooperation activities to combat trafficking in persons, corruption and transnational organized crime, needs to be tempered by patience and considered undertakings over the medium and long term. Thus, the

³⁸ The global programmes were presented to the Commission as conference room papers bearing the following symbols: E/CN.15/1999/CRP.2 (trafficking in human beings), E/CN.15/1999/CRP.3 (corruption) and E/CN.15/1999/CRP.4 (transnational organized crime).

³⁹ The initial Global Programmes proposed budgets for the 1999-2002 period were: US \$ 6.3 million (trafficking), US \$ 6.5 million (corruption), and US \$ 1.4 million (organized crime).

Centre needs to continue devoting a considerable volume of effort at engaging counterparts in the implementation of projects. Such partners include not only the recipient governments, but also donors and other relevant international and national organizations working in these fields.

The Centre now counts on a level of expertise and proven experience in the development and implementation of technical cooperation activities to combat trafficking in persons, corruption and transnational organized crime. With this foundation in place, the Centre is determined to play a pro-active role in supporting the efforts of the international community on these priority issues.

In order to translate the political commitment of the international community and the determination of the Centre into action, a sustained, increasing and dependable flow of financial resources to the Centre is required. This will be, in effect, the litmus test of the political commitment of the Member States.

2. The Global Programme against Corruption

In response to the growing concern about corruption as a global problem and the need for global solutions, the United Nations Office for Drug Control and Crime Prevention established a Global Programme against Corruption.⁴⁰ The primary functions of the Programme include examining the problems associated with corruption with a view to supporting specific efforts of countries which request assistance in developing anti-corruption strategies and policies, and serving as a forum in which information from different countries can be shared in order to bring an element of international consistency, allow each country to learn from the successes and failures of other countries, and to support the process of developing a global strategy against corruption that meets the needs of United Nations Member States.

The Programme employs a systematic process of "action learning" intended to identify best practices and lessons learned through pilot country projects, programme execution and monitoring, periodic country assessments and by conducting a global study on corruption trends. The global study will gather information and analyse and forecast trends about the types, levels, costs, causes and public awareness of corruption around the globe, as well as trends in best practices and anti-corruption policies. Within the Programme, attention is also given to institution building, prevention, raising awareness, education, enforcement, anti-corruption legislation, judicial integrity, repatriation of foreign assets derived from corruption, as well as the monitoring and evaluation of these things.

Since its inception, the Programme has seen the endorsement of many Member States⁴¹, and between 1999-2001, the number of countries which participate in or have asked to join the Programme increased from five to twenty and the number of active pilot countries has increased from three to seven.⁴² Numerous documents have been prepared and made available, including a *United Nations Manual for Anti Corruption Policy* and a *United*

⁴⁰ A series of resolutions of the General Assembly and ECOSOC call upon the Secretary General to take various actions against corruption, including General Assembly resolutions 51/59, 51/191, 54/128, 55/61 and 55/188. The decision to refer the matter to the United Nations Office for Drug Control and Crime Prevention and the Centre for International Crime Prevention reflects the predominant view of Member States that, while the fight against corruption goes beyond the criminal justice field in many aspects, the perception is that most forms of corruption should be seen as crimes for purposes of research, analysis and the development of preventive and reactive countermeasures.

⁴¹ See, for example GA/Res/55/59, annex, "Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century", paragraph 16, in which countries at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders undertake to consider supporting the Programme.

⁴² As of August 2001, pilot projects were planned or ongoing in Benin, Colombia, Hungary, Lebanon, Nigeria, Romania and South Africa, and others were underconsideration for Indonesia, Iran and Uganda.

Nations Anti-Corruption tool Kit, and a new Internet web-page featuring this material and other information about corruption and the fight against it, has been launched.⁴³ The Programme also sponsors or participates in meetings on corruption and where feasible, publishes information about them.⁴⁴ A growing area of concern is the need to deal with the problem of assets which have been derived from cases of “grand corruption” and transferred abroad by the offenders.⁴⁵ The sums involved are often enormous – in the hundreds of millions, and in some cases billions – of dollars, and their recovery is critical both to deterring future abuses and to assisting governments in repairing the social and economic damage done in such cases. In this area, policies against money-laundering and corruption are intertwined, and the United Nations Global Programmes against Money Laundering (GPML) and Corruption (GPAC), are jointly working to develop general policies and specific measures which can assist the countries involved in tracing, identifying and obtaining the return of such assets.

3. CICP’s Integrated approach

In all its activities both, research and technical assistance related, CICP applies an integrated approach. Lessons learned from all around the globe suggest the key to reduced poverty is an approach to development which addresses quality growth, environmental issues, education, health and governance. The element of governance includes, if not low levels of corruption, then the willingness to develop and apply effective anti-corruption strategies. It has been argued that development strategies must be: *inclusive, comprehensive, integrated, evidence based, non partisan, transparent and impact oriented*,⁴⁶ and the same is true for anti-corruption strategies.

Inclusive

As previously discussed including as broad a range of participants or stakeholders as possible raises the expectations of all those involved and increases the likelihood of successful reform. This is true not only for senior officials, politicians and other policymakers, but also for general populations. Bringing otherwise-marginalised groups into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making, and give a greater sense of ownership for the policies which are developed. In societies where corruption is endemic, it is these individuals who are most often affected by corruption, and who are most likely to be in a position to take action against it, both in their everyday lives, and by supporting political movements against it.⁴⁷

The establishment of strategic partnerships has also proven to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be the most effective against specific forms of corruption or in implementing specific strategy elements. Examples include strategic partnerships between NGOs and international aid

⁴³ www.ODCCP.org/corruption.html

⁴⁴ For example, expert group on the “Global Programme against Corruption - Implementation Tools”, Vienna, 13-14 April 2000 and workshop on integrity in the judiciary, Vienna, 15-16 April 2000. A report on the latter meeting appears on the Global Programme web-page.

⁴⁵ See General Assembly resolution 55/188 of 20 December 2000 and United Nations Commission for Crime Prevention and Criminal Justice, Report on the tenth session, E/2001/30, E/CN.15/2001/13, paragraphs 17-24.

⁴⁶ Petter Langseth, 2001, *Helping Member States Build Integrity to Fight Corruption*, Vienna, 2001

⁴⁷ One example of this is Hong Kong’s Independent Commission Against Corruption (ICAC). Over the past 25 years it has conducted workshops involving almost 1 % of the population each year. This gives those consulted input, allows policy-makers to gather information, and generally raises popular awareness of the problem of corruption and what individuals can do about it.

institutions, such as the partnership between the World Bank and Transparency International, which has resulted in excellent national and international anti-corruption awareness raising.

No single factor causes corruption, but a wide range of factors have been shown as supporting or contributing to it, and in many cases these factors are inter-related in such a way that if one is eliminated, increased activity in another may simply take its place. This requires that anti-corruption strategies be comprehensive, addressing as many different factors at the same time as possible. The bribery of public officials, for example, has been linked to low status and salaries, a lack of effective laws or law-enforcement, sub-cultural values that make it acceptable for applicants to offer bribes and for officials to take them, and a lack of effective transparency and monitoring with respect to the officials' duties and the way they carry them out. Acting against only one of these factors – increasing the severity of bribery offences, for example – is unlikely to produce results unless some or all of the other factors are also addressed.

Comprehensive

Corruption is a complex problem, which requires complex responses, addressing as many aspects of corruption and as many of the different factors, which contribute to it as possible. To be effective, however, these responses must also be integrated with one another into a single, unified anti-corruption strategy (internal integration). Strategies must also be integrated with other factors, which are external, such as the broader efforts of each country to bring about such things as the rule of law, sustainable development, political or constitutional reforms, major economic reforms, or major criminal justice reforms. As many aspects of modern corruption have proven to be transnational in nature, external integration increasingly also includes the need for integration between anti-corruption strategies or strategic elements being implemented in different countries.

While the need for integration is manifest, the means of achieving it in practice are not as straightforward, and are likely to vary from country to country. A major requirement is the need for the broadest possible participation in identifying problems, developing strategies and strategic elements, and effective communications between those involved once the process of implementation begins. Broad participation in identifying needs can assist in identifying patterns or similarities in different social sectors, which might all be addressed using the same approach. Broad participation in developing strategies ensures that the scope of each element is clearly defined, and the responsibility for implementing it is clearly established, but that each participant is also aware of what all of the others are doing and what problems they are likely to encounter.⁴⁸ Plans to develop legislation, for example, should also give rise to plans to ensure that law enforcement and prosecutors are prepared to enforce the laws and that they will have the expertise and resources to do so when they are needed. Effective communications between the participants – using regular meetings for example – can then ensure that elements of the strategy are implemented consistently and on a coordinated schedule, and can deal with any unforeseen problems, which arise during the process.

Transparent

Transparency in government is widely viewed as a necessary condition both to effectively control corruption, and more generally for good governance. Populations should generally have a right to know about the activities of their government to ensure that public opinion and decision-making (e.g., in elections) is well-informed. Such information and understanding is also essential to public ownership of policies which are developed, and this is as true for anti-corruption policies as for any other area of public policy. A lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance when in fact broad enthusiasm and participation is needed. It can also lead to a loss of credibility and the

⁴⁸ United Nations pilot projects have successfully used national integrity systems workshops for this purpose.

perception that the programmes involved are corrupt or that they do not address elements of government which may have succeeded in avoiding or opting out of any safeguards. In societies where corruption is endemic, this will generally be assumed, effectively creating a presumption against anti-corruption programmes which can only be rebutted by their being clearly free of corruption and by publicly demonstrating this fact. Where transparency does not exist, moreover, popular suspicions may well be justified.

Non-Partisan

The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most countries. This makes it critical that anti-corruption efforts remain politically neutral, both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be a priority. To the extent that anti-corruption efforts cannot be made politically neutral, it is important that transparency and information about the true nature and consequences of corruption are major factors in an anti-corruption strategy, because these generally operate to ensure that corruption is seen as a negative factor in domestic politics. Where corruption is endemic, the popular perception is that individual interests are best served by predicting which political party will hold power and therefore be in a position to reward supporters. A major focus of anti-corruption strategies must be the reversal of this attitude so that the perception is that any political faction which is exposed as corrupt is not acting in the public interest and is therefore unlikely to remain in power for long.

Multi-partisan support for anti-corruption efforts is also important because of the relationship between competition and corruption. Just as competition in the private sector leads companies to resort to bribery to gain advantages in seeking business, competition between political factions can lead participants to resort to political corruption in order to obtain or maintain advantages, or to offset real or perceived advantages on the part of other factions. Common problems in this area include the staffing of public-service positions with political supporters to reward them and ensure further support and to influence areas of public administration in their favour. Critical public service positions in this context include senior law-enforcement, prosecutorial and judicial offices, senior positions in the military or security forces, and officials responsible for the conduct of elections. Similarly, supporters in the private sector may be rewarded (or opponents punished) using the allocation of government spending on goods or services. As noted in Part 1, a major challenge in this regard is distinguishing between legitimate political contributions from individuals or companies to parties or candidates whose policies they support, and contributions made in the belief or expectation that the contributor will obtain a reward or avoid retaliation if the recipient is elected.

Evidence based

It is important that strategies be based on concrete, valid evidence at all stages, including preliminary assessments of the extent of corruption and need for countermeasures, the setting and periodic reassessment of strategic objectives, and the assessment of whether objectives have been achieved or not. In countries where corruption is seen as endemic, the external gathering or validation of this evidence is often seen as an important factor in the credibility of the evidence, and hence the credibility of strategic plans based on that evidence as well as periodic assessment of progress against corruption. The United Nations Global Programme against Corruption has established a *comprehensive country assessment* to assist in this process, where such assistance is requested. This includes a review of all available information about relevant factors to establish information as a “base-line” for future comparison and an initial qualitative and quantitative assessment of the forms and general extent of corruption (see below).

Sources of information may vary, but will generally include opinion surveys, interviews with relevant individuals such as officials or members of companies which deal with the government, focus group discussions about the problem of corruption and aspects of the problem or measures against it which may be unique to the country involved, the preparation of case-studies, an assessment of anti-corruption laws and the agencies which are intended to monitor, prevent and/or prosecute corruption cases, and assessments of other key institutions. Also critical is a more general assessment of strengths and weaknesses in civil societies, national cultures or other areas which may be important in the development of a successful and effective anti-corruption strategy. Many factors will vary from country to country, which makes it important that comprehensive country assessments be custom-tailored to each country, and that much of the actual design be done domestically.

Country assessments and other sources of evidence should be used to assess corruption in both qualitative and quantitative terms, considering the full range of corruption-related activities, their effects, and how they operate in the circumstances of each country, the extent and relative prevalence of these activities, as well as the overall extent and impact of corruption in the country as a whole. At the policy-making level, the evidence should then form the basis of the development of anti-corruption strategies and policies. At management levels, the knowledge that evidence will be objectively gathered and assessed should encourage result-oriented management, and a clear understanding of exactly what results are expected. At operational levels, service providers should gain an understanding of what corruption is, how it affects them and what is expected of them in terms of applying anti-corruption policies in their work. The users of the various services should have the same information, so that they come to expect corruption-free services and are prepared and equipped to speak out when this is not the case. The international element in country assessments should serve as a validation of the evidence, a source of objective and independent analysis and reporting, and form the basis for international comparison, the communication of information about problems encountered and solutions developed from one country to another, and the development of a coherent international or global strategy against corruption.

Once anti-corruption strategies are in place, further country assessments should review both actual progress made and the criteria by which progress is defined and assessed. In practical terms, this gives participants at all levels an opportunity to comment, providing valuable feedback about both results and policies, and helping to protect a general sense of ownership and support for the programme. The need for popular participation makes credibility or legitimacy a critical factor in controlling corruption. For this reason, further assessments should consider not only evidence about whether the programme is actually achieving its goals, but about the perceptions of key figures and the general population.

It is important that the process of gathering and assessing evidence be seen as an ongoing process and not a one-time event. One term used to describe this is “action research”, which has been described as embracing “principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation.”⁴⁹. Common among most is the concept of using dialogue between different groups to promote change through a cycle of evaluation, action and further evaluation,

Impact oriented

As discussed above, it is critical that clear and realistic goals be set and that all participants in the national strategy be aware of these goals and the status of progress made in achieving them. The complexity of the corruption problem and the difficulty in gathering valid “baseline” and progress data make this difficult, but it is critical. Initial evidence is used to

⁴⁹ Kaye Seymour-Rolls and Ian Hughes, “Participatory Action Research: Getting the Job Done,” Action Research Electronic Reader, University of Sydney, 1995.

provide the basis for comparison and to set initial goals, while periodic assessments of what has been accomplished monitors progress, identifies areas which may need more attention or a different approach, and supports ongoing revision of the initial goals of the programme. Validated evidence can also play an important role in reforms in other areas. Evidence that corruption is being reduced supports confidence in national economies, for example, and evidence of the nature and consequences of political corruption will lend support to democratization and similar political reforms.

National anti-corruption strategies involve long-term and wide-ranging policies, and it is essential that planning and philosophy make allowances for periodic monitoring and assessment and for adjustments based on those assessments.⁵⁰ The need for such adjustments should not be seen as evidence of failure: indeed, changes are as likely to be triggered by elements which are more successful than expected or which succeed in unexpected ways as by the need to re-think elements which have fallen short of the desired or predicted results. Adjustments may also be triggered or advised by outside information or changes in external circumstances, such as successes achieved in other countries or the development of international agreements or instruments.

In concordance with this approach the project on strengthening judicial integrity will involve a series of different actors at the national, international and sub-national level including the Judiciary at the Federal- and the State level, the International Chief Justices' Leadership group, the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the victims of corruption, the media, the private sector, the NGO's and the International donor community.

Other Lessons learned when helping countries build integrity to fight corruption

Finally, in order for this initiative to be successful a series of crucial lessons which have emerged clearly in the course of the past decade should be internalised by all stakeholders involved.

1. *Economic growth is not enough to reduce poverty.* Unless the levels of corruption in the developing world are reduced significantly there is little hope for sustainable economical, political and social development. There is an increasing consensus that if left unchecked, corruption will increase poverty and hamper the access by the poor to public services such as education, health and justice. However besides recognising the crucial role of good governance for development, the efforts undertaken so far to actually remedy the situation have been too limited in scope. Curbing systemic corruption will take stronger operational measures, more resources and a longer time horizon than most politicians will admit or can afford. The few success stories, such as Hong Kong or Singapore, demonstrate that the development and maintaining of a functioning integrity system needs both human and financial resources exceeding by far what is currently being spent on anti-corruption efforts in most countries.

2. *Need to balance awareness raising and enforcement.* The past decade has mainly be characterised by an substantive increase of the awareness of the problem. Today we are confronted with a situation where in most countries not a day passes without a political leader claiming to eradicating corruption. However, it increasingly emerges that this increase in the awareness of the general public all too often is not accompanied by adequate and visible enforcement. In various countries this situation has led to growing cynicism and frustration among the general public. At the same time it has become clear that public trust in the government anti-corruption policies is key.

⁵⁰ See also Part 4.VIII, below, for detailed discussion on monitoring and assessment.

3. *It takes integrity to fight corruption.* As obvious as this might seem, there are countless initiatives that have failed in the past because of the main players not being sufficiently “clean” to withstand the backlash that serious anti-corruption initiatives tend to cause. Any successful anti-corruption effort must be based on integrity and credibility. Where there is no integrity in the very system designed to detect and combat corruption, the risk of detection and punishment to a corrupt regime will not be meaningfully increased. Complainants will likely not come forward if they perceive that reporting corrupt activity exposes them to personal risk. Corrupt activity flourishes in an environment where intimidating tactics are used to quell, or silence, the public. When the public perceives that its anti-corruption force can not be trusted, the most valuable and efficient detection tool will cease to function. Without the necessary (real and perceived) integrity, national and international “corruption fighters” will be seriously handicapped

4. *Building integrity and credibility takes time and consistency.* It is fair to say that, in the eyes of the public, most international agencies have not demonstrated sufficient integrity to fight corruption. These agencies have not accepted that integrity and credibility must be earned based upon “walk rather than talk”. The true judges of whether or not an agency has integrity and credibility are not the international agencies themselves but rather the public in the recipient country.

5. *There is a need for an integrated approach.* It has emerged clearly that national institutions cannot operate successfully in isolation but there is a need to create partnerships across all sectors and levels of government and civil society in the fight against corruption.

6. *Importance of involving the victims of corruption.* Most donor-supported anti-corruption initiatives primarily involve only the people who are paid to fight corruption. Very few initiatives involve the people suffering from the effects of corruption. It is therefore critical to do more of what ICAC in Hong Kong has done over the past 25 years. For example, the ICAC interfaces directly (face to face in awareness raising workshops) with almost 1 percent of the population every year.

7. *Managing Public Trust.* While Hong Kong has monitored the public’s confidence in national anti-corruption agencies annually since 1974,⁶ few development agencies and/or Member States have access to similar data. The larger question is whether the development agencies, even with access to such data, would know how to improve the trust level between themselves and the people they are supposed to serve. Another question is whether they would be willing to take the necessary and probably painful action to improve the situation.⁷

8. *Money Laundering and Corruption;* Even though these two terms are quite synonymous, they seem to be treated as different problems. The media frequently links ‘money laundering’ to illicit drug sales, tax evasion, gambling and other criminal activity⁵¹ While it is hard to know the percentage of illegally-gained laundered money attributable directly to corruption, it is certainly sizeable enough to deserve prominent mention. It is

⁶ In Hong Kong the trust level is considered critical for the effectiveness of any complaint or whistleblower measures and is monitored closely. In 1997, 85.7 percent of the public stated that they would be willing to report corruption to ICAC and 66 percent were willing to give their names when reporting corruption. As a result more than 1,400 complaints were filed in 1998, up 20 percent from 1997. See: Richard C. LaMagna, *Changing a Culture of Corruption*, US Working Group on Organized Crime, 1999

⁷ Results from “client satisfaction surveys” conducted between multilateral agencies and the public in the past were often so bad that they were given limited circulation and/or ignored.

Even within the international development agencies the trust level between their own staff and their internal complaints function is rarely monitored

⁵¹ International Herald Tribune, 2001-02-08

crucial to recognize the dire need for an integrated approach in preventing both activities. When we accept the idea that lack of opportunity and deterrence are major factors helping to reduce corruption, it follows that when ill-gotten gains are difficult to hide, the level of deterrence is raised and the risk of corruption is reduced.

9. *Identifying and recovering stolen assets is not enough* According to the New York Times,⁵² as much as \$1trillion in criminal proceeds is laundered through banks worldwide each year with about half of that moved through American banks. In developing countries such as Nigeria, this can be translated into US\$ 100 Billion stolen by corrupt regimes over the last 15 years.⁵³ Even if Nigeria, for example, receives the necessary help to recover its stolen assets, does it make sense to put the money back into a corrupt system without trying to first increase the risk, cost and uncertainty to corrupt politicians who will again abuse their power to loot the national treasury?

10. *Need for international measures.* Quality in government demands that measures be implemented world-wide to identify and deter corruption and all that flows from it. In the U.S., attempts are being made to pressure banks to know who its clients are and to monitor the accounts of foreign officials and their business partners. However, the powerful banking industry is blamed for preventing legislative measures from becoming law. The good news is that the disease of corruption is getting more attention than ever before. Abuse of power for private gain can only be fought successfully with an international, integrated and holistic approach introducing changes both in the North and the South

5. Judicial Integrity as a Cornerstone

Corruption is the natural enemy of the rule of law. Corruption within criminal justice institutions mandated to enforce and safeguard the rule of law is particularly alarming and destructive to society. It is a sad fact that in many countries, it is precisely these institutions that are perceived as corrupt. Instances and allegations of corrupt police who sell “protection” to organized crime, judges who are “in the pocket” of powerful criminals and court systems that are so archaic that citizens are denied access to justice are rampant. The immediate effect of such perceptions is public cynicism towards government, lack of respect for the law and societal polarization. This environment inevitably leads to unwillingness on the part of the public to participate in bona fide anti-corruption initiatives.

An honest criminal justice system, including the courts, is a necessary prerequisite to any comprehensive anti-corruption initiative. Corruption in criminal justice systems will absolutely devastate legal and institutional mechanism designed to curb corruption, no matter how well targeted, efficient and honest. It will serve no purpose to design and implement anti-corruption programs and laws if the police do not seek to enforce the law, or a judge finds it easy and without risk to be bribed. Judicial integrity should therefore be the cornerstone of any anti-corruption program and a priority of the GPAC. Special attention will be given to the involvement of civil society using, for example, judicial complaints boards.

6. An International Judicial Leadership Group on Strengthening Judicial Integrity

In April 2000 the Centre for International Crime Prevention in collaboration with Transparency International convened a Meeting of 8 Chief Justices and senior high-level Justices from Africa and Asia. It was hosted by the Centre in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Workshop was conducted under the chairmanship of former World Court Judge Christie Weeramantry, with Justice Michael Kirby of Australia acting as Rapporteur.

⁵² New York Times Feb 7th 2001

⁵³ Financial Times, London 24/7/99, Nigeria’s stolen money

This Judicial Group considered means by which to strengthen the judiciary, strengthening judicial integrity, against corruption and to effect judicial reform across legal systems. The Global Programme against Corruption found that the unique approach to the subject matter taken on that occasion is one most likely to yield the best results in terms of combating judicial corruption. In the view of the authors, some important lessons, which might help overcome the impasse against corruption, were learned in this experience. The unusual partnership, based on mutual trust, exemplified by the Group, and the self-evaluative and remedial, or, “indigenous”, nature of the recommendations of the justices themselves demarcate the road to progress and future effectiveness in combating judicial corruption. In this regard CICP has found this promising approach to assessment and remedy as a forerunner to the transfer of such judicial know-how among senior judges of different parts of the world⁵⁴ In fact, the insightful and practical recommendations made by the participating justices highlighted the importance of involving senior practitioners of the sector which is a target of reformative action.

7. The Strengthening Integrity in Judiciary project in Nigeria

The Judiciary Integrity and Capacity project in Nigeria the Workshop of the Judicial Leadership Group on Strengthening Judicial Integrity. The project aims at improving the precarious situation of the rule of law in Nigeria caused by insufficient integrity and capacity of the justice system in general and the judiciary in particular.

A recent study, conducted by the Nigerian Institute for Advanced Legal Studies, seems to confirm the rather discouraging state of art of the Nigerian Justice System. According to surveys conducted by the Nigerian Institute of Advanced Legal Studies (NIALS)⁵⁵ indicates a general lack of efficiency and effectiveness in the Nigerian Judiciary

It is the aim of the project to remedy this situation. More specifically the project is designed to assist the Nigerian authorities in the development of sustainable capacities within the Nigerian judiciary and to strengthen judicial integrity to contribute to the re-establishment of the rule of law in the country and to create the necessary preconditions for handling complex court cases in the area of financial crimes and by doing so, to support the development of a functioning institutional anti corruption framework to contribute to the prevention of illegal transfers.

In the absence of an in-depth knowledge of the current capacity and integrity levels within the judiciary and consequently of an evidence-based anti-corruption action plan for the judiciary, this project will focus on supporting the Nigerian Judiciary in the *action planning process*. The preconditions for evidence-based planning will be made available through the conduct of capacity and integrity assessments of the criminal justice system in three pilot States including: a desk review of all relevant information regarding corruption in the criminal justice system; face to face interviews with judges, lawyers and prosecutors; opinion surveys with court users; an assessment of the rules and regulations disciplining the behaviour of judges; a review of the institutional and organisational framework of the criminal justice system; and the conduct of focus groups⁵⁶.

Based on the outcomes of this assessment, CICP will assist the judiciary at the federal level, in the three pilot States and the nine pilot courts to conduct integrity meetings to develop plans of action focusing on the strengthening of judicial integrity and capacity. Finally, CICP

⁵⁴ The findings and recommendations of the first meeting of justices, documented by Michael Kirby, can be accessed on the web page of the Centre (http://www.ODCCP.org/corruption_judiciary.html)

⁵⁵ NIALS book on corruption in Nigeria

⁵⁶ The assessment of judicial integrity and capacity will be conducted following the recommendations made by the second meeting of Chief Justices on “Strengthening Judicial Integrity” held in February 2001 in Karnataka State, India.

will support the judiciaries, in close collaboration with the Attorney General's offices, to launch the implementation of the State level actions plans.

Different from past initiatives by donor agencies trying to assist in the reform of judiciaries, the project is characterised by a strong commitment towards maintaining and strengthening judicial independence and at the same time make the judiciary more accountable. It is therefore crucial to note that within the context of all the various components of the project, the Judiciary itself, headed by the Chief Justice of the Federation, owns and controls the entire planning, implementation and monitoring process.

Even though limited to the judiciary in its immediate scope, the programme takes a wider perspective aiming at the promotion of integrity, efficiency and effectiveness of the entire criminal justice system. It will comprise an exhaustive assessment of the levels, causes types, locations and effects of corruption within the judiciary and provide hereby the basis for an integrated approach to change. At all stages of this process particular attention will be given to the empowerment of the general public and the court users through social control boards and other forms of participatory channels.

The Programme, furthermore, focuses on the building of **strategic partnerships** reaching across institutions and branches of Government, the legislative and including representatives of the civil society. In concordance with the action learning process which is applied by CICP in general, the Centre will pilot test various measures within three pilot States in 9 courts. The outcomes will be collected documented and further cross fertilised through broad information sharing and dissemination. At the international level the lessons learned will be analysed by the international Chief Justices' Leadership group.

As mentioned above, the overall framework for the development of the judicial integrity promotion programme has been provided by the outcome in particular of the first meeting of the International Chief Justices' Leadership Group ⁵⁷. The recommendations made in this occasion fall under the broad categories of (i) access to justice; (ii) the quality and timeliness of justice; (iii) the public's confidence in the judiciary; and (iv) the efficiency, effectiveness and transparency of the judiciary in dealing with public complaints. More specifically the Group issued the following recommendations as key reform areas to be addressed:

Generation of reliable court statistics

Enhancement of Case Management

Reduction of Court Delays

Increased Judicial Control over delays

Strengthen Interaction with Civil Society

Enhance Public Confidence in the Judiciary

Improve terms and conditions of service

Counter Abuse of discretion

Promote merit based judicial appointments

Enhanced Judicial training

Develop transparent Case assignment system

Introduce sentencing guidelines

Develop credible and responsive complaints system

Refine and enforce Code of Conduct.

⁵⁷ Annex IV.

The First Federal Integrity Meeting for Chief Judges provided an excellent opportunity to assess the extent to which the recommendations made by the International Judicial Leadership Group for Strengthening Judicial Integrity are relevant to the specific Nigerian context. For this purpose the Chief Judges were invited to prioritise as part of a participants survey these recommendations ⁵⁸.

The first Federal Integrity workshop for Chief Judges defined and agreed upon the objectives of the project which initially will be implemented over a 24 month period. In order to facilitate this planning process the meeting was furthermore asked to identify the respective impact indicators which these measures will directly impact on and which consequently should be assessed to establish the baseline against which progress will be monitored.

As far as the operational management of the project is concerned, a National Project Coordinator will be hired for two years starting Dec. 1, 2001 and a local Research Institute for the conduct of the assessment. After the completion of the assessment State-level integrity workshops for the judiciary will be conducted in the in the three pilot states (March/April 2002) to review the findings of the assessments and based on the former develop a action plans for strengthening judicial integrity. These state-level integrity and action planning workshops will also facilitate the development of strategic partnerships across the various stakeholder groups including civil society at large and court user interest groups in particular in order to increase the sustainability of the reform process. After 18 month it is planned, given the availability of additional funding, to conduct a second assessment within the three pilot States to measure the results of the single measures implemented within the framework of the action plans in each of the 9 pilot courts. Based on the findings of this second assessment eventually necessary adjustments of the already implemented measures will be made. The second assessment will also provide the basis to broaden gradually the assistance in its geographical and substantial scope (e.g. involve more courts within and outside the pilot states and increasingly extend the assistance to the other criminal justice institutions).

⁵⁸ See Findings of the participants' survey

D. The Pilot Projects and the Comprehensive Assessment Methodology by Dr. Edgardo Buscaglia, Senior Crime Prevention Officer, GPAC

As a result of discussions held in this workshop, the Chief Judges have been addressing four main areas dealing with enhancing access to justice, improving the quality of court services, increasing confidence in the judicial system, and introducing an effective system for filing and addressing the public's complaints. The international case studies explained below constitute best practices covering these four same areas.

In order to avoid cultural, socio-economic, geographic, and political barriers to access the court system, the judiciary must adopt the most effective substantive and procedural mechanisms capable of reducing the direct and indirect costs faced by those seeking to resolve their conflicts, including the reduction of corrupt practices. If barriers to the judicial system, caused by corrupt practices, affect the socially-marginalized and poorest segments of the population, expectations of social and political conflict are more common, social interaction is more difficult, and disputes consume additional resources⁵⁹ Moreover, the current gap between the "law in the books" and "law-in-action" found in most developing countries hampers confidence in the judicial system and negatively affects the quality of court services. Recent international comparative studies show that the scarce capacity to translate the "law found in the books" into a "law in action" for dispute resolution purposes can many times be linked to corruption-fostering excessive procedural formalisms and administrative complexities on court users. This state of affairs damages the legitimacy of the state, hampers economic interaction, and negatively affects the poorest segments of the population.⁶⁰ This kind of environment also blocks the filing and resolution of relatively simple cases brought by the socially weakest segments of the population. As a result, large segments of the population, who lack the information or the means to surmount the significant substantive and procedural barriers, seek informal mechanisms to redress their grievances. Informal institutions do provide an escape valve for certain types of conflicts. In this context, social control mechanisms applied to the judiciaries have emerged in several countries.

International studies of judicial systems show that judicial sectors within countries affected by systemic corrupt practices are ill-prepared to foster social development. In these cases, the most basic elements that constitute an effective judicial system are missing. These elements include: (a) predictable judicial discretion applied to court rulings; (b) access to the courts by the population in general regardless of their income level; (c) reasonable times to disposition; and (d) adequate remedies.⁶¹ The corruption-related time delays, backlogs, and uncertainty associated with expected court outcomes have hampered the access to justice to those court users who lack the financial resources required to face the licit and illicit litigation costs.

Some countries from different regions around the world have utilized socially-driven informal control mechanisms to inject social pressures in the implementation of judicial reforms

⁵⁹ Norms are here understood as coordinating mechanisms for social interaction. Refer to Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29; and to Cooter, Robert (1996) "The Theory of Market Modernization of Law", *International Review of Law and Economics*, Vol. 16, No 2, pp. 141-172.

⁶⁰ See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29

⁶¹ Buscaglia, Edgardo, Ratliff, William, and Dakolias, Maria (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press

addressing the above problems. These social control mechanisms have mainly covered four functions: (i) monitoring and reporting on the implementation of much-needed judicial reforms; (ii) monitoring and reporting on the quality of judicial services supplied to citizens; (iii) monitoring the number and types of complaints filed by users of judicial services; and (iv) in some cases, these social control boards also provide informal alternative dispute resolution channels. These social control boards are mostly composed of representatives of the judicial system (judges and prosecutors are included in all of them) working hand in hand with representatives from civil society (e.g. members of the bar and litigants). The boards act as organs that state authorities are required by law to consult on a periodic basis. The subset of five countries shown below in Chart 2 have implemented social control boards as part of their judicial reform drives. These social control boards, composed of civil society representatives at the local level, have varied in nature and scope. The numerical results shown in Chart 2 are preliminary conclusions of a recent field jurimetric study.⁶² For example, in some countries these civil society boards were proposed as simply civil society-based court-monitoring systems (Singapore and Costa Rica) and in other cases, these bodies were recognized and performed their conflict resolution function as alternative –informal mechanisms (in the cases of Chile, Colombia, and Guatemala).

For example, in the case of Colombia, 3.7 percent of those interviewed, in a recent University of Virginia survey, showed proof that they have attempted to access formal court-provided civil dispute resolution mechanisms, (compared to 4.9 percent of the same poorest segment of the population in urban areas nationwide) while just 0.2 percent of the sampled households (i.e. 9 out of 4,500 households) responded that they were able to obtain some type of final resolution to their land or family disputes (due involving mainly to title-survey defects and alimony cases) through the court system. Colombia also shows that 91 percent of those demanding court services during the period 1998-99 were within the upper ranges of net worth. While just 9 percent of those court users were in the lowest 10 percent range of measurable net worth within the region. In contrast to this low demand for court services, Colombia also shows that 8 percent of those interviewed in 1999 and 7.5 percent of those interviewed in 2000 gave specific detailed instances of using community-based mechanisms (mostly neighborhood councils and complaint panels) in order to resolve land-title-commercial and/or family civil disputes. This indicates a gap between formal and informal institutional usage through community community-based conciliation and neighborhood complaint boards that is common in the other four countries sampled here. In the case of Colombia, social judicial control bodies r in the form of a so-called “Complaint Panel or Board” and composed of three “prominent local residents” selected by Neighborhood Councils (“Parroquias Vecinales or Comunas”) and as such, they do enjoy a high level of popular-based legitimacy. Although the Boards’ decisions are not legally binding, Their decisions do receive tacit approval by municipal authorities. but the Boards’ decisions are not legally binding. In fact, Survey Bureaus usually formally refer to the Boards’ findings in order to substantiate their own rulings. This clearly indicates the local governments’ recognition of the Boards’ rulings. Decisions are not appealed and social control mechanisms usually prevail in the enforcement of the Boards’ decisions.

In all cases, these civil society-based bodies emerged and were “recognized” by governments as a result of the increasing gap between the demand and supply of court services. At the same time, these bodies served the purpose of monitoring the progress of judicial reforms. Specifically, these civil society-based boards have performed two functions within the judicial domain. These are:

⁶² The study covers ten countries in Africa, Asia, and Latin America. This study was designed and conducted at the Center for International Law and Economic Development-CILED- at the University of Virginia School of Law (USA).

in some countries, such as in Chile, Colombia, Costa Rica, Singapore, and Guatemala, these boards have served the purpose of resolving civil disputes (mostly family and commercial related case types) through informal means;

in Costa Rica and in Singapore, these social control boards have also monitored the functioning of pilot courts during judicia reforms.

The performance of the first role specified has clearly enhanced access to justice in civil cases and, judging from the indicators gathered and shown below, they have also reduced the frequency of perceived corruption and institutional legitimacy.

CHART 2

TWO-YEAR PERCENTAGE CHANGES IN CORRUPTION-RELATED INDICATORS BEFORE AND AFTER SOCIAL CONTROL MECHANISMS

	Frequency of Corruption	Access to Instit.	Effectiveness	Transparency	Administrativ Complexity	
Chile						
(3 pilots)	-28.7 %	19 %		5 %	93 %	-56.9%
Colombia						
(3 pilots)	-2.5%	16.4%		8.2%	17.4%	-12.5%
Costa Rica						
(N-12 pilots)	-7.9 %	6.2%		3.7 %	18.5 %	-23.8%
Guatemala						
7 pilots	-9.4%	32.6 %		9.5 %	41.9 %	-71.3%
Singapore						
-4 pilots	-6.3%	8.4 %	9.2 %	8.4 %	-12.7%	

It is clear from Chart 2 above that all percentage indicators of institutional performance, captured through court surveys, have shown significant improvements. The social control boards were designed with variable numbers of civil society representatives and in three cases (in the cases of Chile, Colombia, and Guatemala) these represented alternative mechanisms to resolve family and commercial disputes mostly in rural regions where poverty concentrates the most. Yet, the indicators above refer to improvements in pilot courts experiencing administrative, organizational, and procedural reforms (to be specified in the next section) in jurisdictions within which informal mechanisms to resolve disputes civil society monitoring bodies were also introduced and implemented. On the other hand, in these same countries, there were also pilot courts introducing the same types of organizational, administrative, and procedural reforms in areas where no informal monitoring and informal dispute resolution mechanisms existed.

One should also compare judicial reforms with no civil society components to other reforms with civil society components. The results from our next chart are striking. For example, when one compares courts undergoing the same internal organizational, administrative and procedural reforms in regions with NO social control boards with pilot courts implementing the same types of reforms in regions with social court-control boards, we find significant differences in the indicators of perceived frequencies of corruption access to justice, and transparency of court proceedings. The differences are shown in the Chart immediately above covering the period 1990-2000.

CHART 3

DIFFERENCES IN PERCENTAGE INDICATORS BETWEEN COURTS WITH AND WITHOUT SOCIAL CONTROL MECHANISMS

(the percentages shown below are computed for each category-column- by subtracting the average indicator for the courts with social control from the indicators from the board without social control)

	Frequency of Corruption	Access to Instit.	Effectiveness	Transparency	Administrative Complexity
Colombia (3 pilots)	-5.3%	7.1%	4.9%	10.2%	- 0.2%
Guatemala 7 pilots	-3.2%	17.4 %	5.2 %	31.2 %	-0.5%

The numerical results are based on surveys conducted with court users at point of entry. Survey results indicate that court users, drawn in this case from the lowest income levels (i.e. bottom quartile in each region) do experience significant differences in their experiences when comparing courts with and courts without social control. This analysis was only performed in two of the ten countries selected for the aforementioned jurimetric study. Yet, the differences in the perceived frequencies of corruption when comparing courts with social control and those without social control are striking (and tested for significance through the Friedman test). For example, the access to institutions perceived by court users in Guatemala's courts subject to social control is 17.4 percent higher than in courts not subject to social control bodies such as the ones described above. The same applies to differences in perceptions of transparency in court proceedings, differences in administrative complexity, and to the differences in the effectiveness applied to the provision of court services.⁶³

⁶³ The survey conducted by the Center for International Law and Economic Development (CILED) at the University of Virginia focuses on the poorest segments of the populations in the five countries sampled.⁶³ For example, in Colombia the CILED survey also aims at comparing the poorest households' net worth (i.e. households within the bottom 20 percent of the regional socioeconomic range) before and after their access to formal and informal conflict resolution mechanisms in cases dealing with land title-survey-related disputes and alimony payments. We then seek precise indications of how and why dispute resolution mechanisms affect the average household's net worth as one of the possible determinants of poverty conditions. The sample sizes all cover between 5 and 10 percent of all court users within each pilot court selected. Differences in indicators and their statistical significance were tested by using the Friedman test and other standard regression techniques. These differences are all statistically significant at the 5 percent level. See Buscaglia, Edgardo. 2001. Paper Presented at the World Bank Conference on Justice. St. Petersburg, Russia. July 3-6, 2001

V. ANNEXES: TECHNICAL PAPERS, GUIDES AND TOOLS

A. Empowering the Victims of Corruption through Social Control Mechanisms

Abstract

Corruption within criminal justice institutions mandated to enforce and safeguard the rule of law is particularly alarming and destructive to society. It is a troubling fact that in many countries, it is precisely these institutions that are perceived as corrupt.⁶⁴ The social effects of this sort of fact-based and perceived systemic corruption undermines the legitimacy of the state and democracy itself

This paper emphasize the importance of improved checks and balances facilitated through: (i) an integrated approach that is evidence-based, comprehensive, inclusive, transparent non-partisan and impact-oriented; (ii) the empowerment of the victims of corruption through improved access to credible social control mechanisms; (iii) establishment of new national and international strategic partnerships involving civil society, governments and international donor agencies; and (iv) systematic, reliable and transparent monitoring of levels, types, location, causes, cost and remedies of corruption.⁶⁵

A. INTRODUCTION

In many countries, applicants for driver's licenses, building permits and other routine documents have learned to expect a 'surcharge' from civil servants. On a higher scale, bribes are paid to win public contracts, to purchase political influence, side-step safety inspections, bypass bureaucratic red tape and to ensure that criminal activities are protected from interference by police and other criminal justice officials. These are just a few examples. The direct and measurable consequences of corruption are more pervasive and profound than these examples suggest. After years of research and discussion, a broad consensus among scientists, practitioners and politicians has been established based on the conclusion that corruption is one of the main obstacles to peace, stability, sustainable development, democracy, and human rights around the globe. Widespread corruption endangers the stability and security of societies, undermine the values of democracy and morality, and jeopardize social, economic and political development.

There is a growing tide of awareness throughout the world that combating corruption is integral to achieving more effective, fair and efficient government. More and more countries view bribery and corruption as a serious roadblock to development and are asking the United Nations to assist them in gaining the requisite set of tools to curb such practices. Hence, the Vienna-based United Nations Centre for International Crime Prevention has launched a *Global Programme against Corruption*, with pilot projects in select countries, in Africa, Asia, the Middle East, Latin America and Eastern Europe

Corruption is now widely recognized as pervasive, affecting developed and developing countries alike and unduly influencing a wide range of both public- and private-sector activities. Systemic and widespread corruption is still viewed by most as a crime problem, and criminal and penal measures remain as central elements of anti-corruption strategies. Yet corruption is now recognize as often rooted in deeper social, cultural and economic factors,

64 In World Bank public surveys conducted in Uganda, Tanzania, Bolivia, Nicaragua and Ukraine, in their dealings with the criminal justice system, 50% of those surveyed stated that they were faced with corruption in the courts and about 60% were faced with corruption dealing with the police.

65An independent, comprehensive assessment using both perception data and hard facts

and that these also must be addressed if the fight against corruption is to succeed. We also recognize that the deleterious affects of corruption go far beyond harm to individual victims. They represent a serious obstacle to enhancing economic growth and to improving the lives of the poorest segments of the populations in developing countries and those with societies and economies in transition. Development agencies have come to understand that corruption not only erodes the actual delivery of aid and assistance, but undermines the fundamental goals of social and economic development itself.

This broader understanding of the nature of corruption has led those confronted with it to look for more broadly-based strategies against it, such as the implementation of operational social control mechanisms at the national and local levels. Reactive criminal justice measures are now supplemented by social and economic measures intended, not only to deter corruption, but also to prevent corruption. The recognition that public-sector and private-sector corruption are often simply two aspects of the same problem has led to strategies which involve not only public officials, but major domestic and multinational commercial enterprises, banks and financial institutions, other non-governmental entities and in many strategies, civil societies in general. To address the bribery of public officials, for example, efforts can be directed not only at deterring the payment and the receipt of the bribe, but at also reducing the incentives to offer it in the first place.

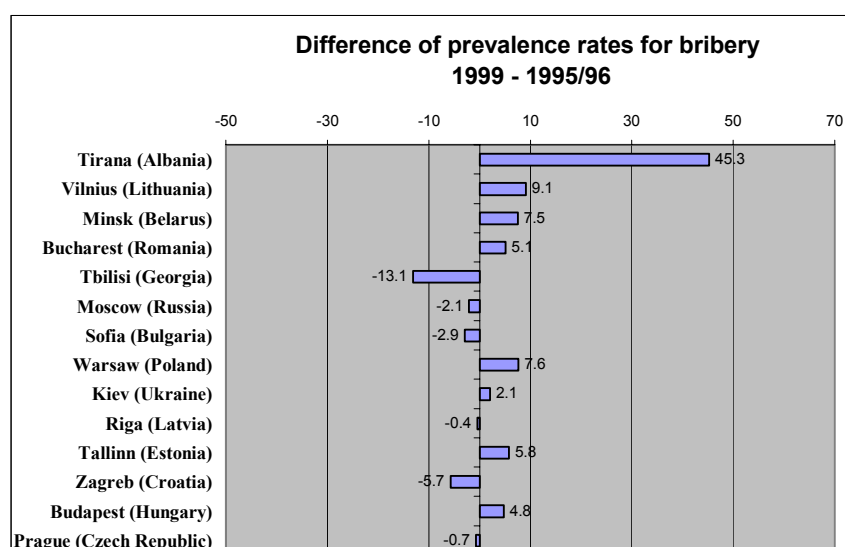
In developing countries, corruption has hampered national, social, economic and political progress. Public resources are allocated inefficiently. Competent and honest citizens feel frustrated and their level of distrust tend to rise. Consequently, productivity is lower, administrative efficiency is reduced and the legitimacy of the political and economic order is undermined. The effectiveness of efforts on the part of developed countries to redress imbalances and foster development also erodes: foreign aid disappears, projects are left incomplete, and ultimately donors lose enthusiasm. Corruption in developing countries also impairs economic development via transfers of large sums of money in precisely the opposite direction of where poverty needs to be adhered. Funds intended for aid and investment instead flow quickly back to the accounts of corrupt officials, in banks in stable and developed countries, beyond the reach of official seizure and random effects of economic chaos generated by corruption at home. The reverse flow of capital leads in turn to political and economic instability, poor infrastructure, education, health and other services, and a general tendency to create or perpetuate relatively low standards of living. Some of these effects can be found in industrialized countries, although here the ability of various infrastructures to withstand, and in some cases, to combat corruption, is greater.

Corruption is also enhanced by the presence of organized crime at domestic and international levels. Apart from the obvious incentives for organized crime groups to launder and conceal their assets, various diverse forms of corruption allow such groups to minimize the risks and maximize the benefits of their various criminal enterprises. In the case of organized crime, corruption is even more dangerous because of the always present, high likelihood that criminal organizations will capture State decision-making capacities and policies. Officials can be bribed to overlook, and sometimes even participate in, the smuggling of commodities ranging from drugs, arms, human beings, false instruments, instrumentality, etc. Often junior public officials who will not accept bribes find themselves threatened, and if a junior official takes action, such as seizing contraband or arresting smugglers, the attention of organized crime simply shifts to attempts at corrupting prosecutors, judges, jurors or others in positions of influence. In any case, official corruption is an essential input for the growth of organized crime activity with the capacity to pose a significant international security threat to social and political stability through illicit and international money laundering operations.

1. Is it getting worse or better?

Surveys of victims of corruption conducted in Uganda⁶⁶, Mauritius⁶⁷, Nicaragua⁶⁸, Bolivia⁶⁹, Ukraine⁷⁰ and Tanzania⁷¹ show that petty corruption and administrative corruption in most countries are at relatively high levels of prevalence. Based on these surveys it is possible to conclude that corruption in health, education and law enforcement is high but not necessarily increasing unless a country is confronted with severe political, economic or social challenges, including war or other disaster. See Table 1 for examples from Eastern Europe.

There is also a need to take into account the effects of the increased public awareness due to increased media attention, which not necessarily means increased levels of corruption. If anything increased awareness combined with increased public confidence in the State should



result in reduced corruption.

Table 1. Difference in Prevalence Rates between 1995/96 –1999 in Percent

Table 1 shows UNICRI data from the 1996 and 2000 ICVS regarding one-year prevalence rates for bribery. Even excluding Tirana from the analysis (59% in 2000), taking into account that the Kosovo war and the transit of international aid may have created local opportunities for corruption, it should be noted that only five cities (Prague, Riga, Kiev, Sofia and Moscow) showed variations limited within +/- 3%, while much bigger differences were observed in all other cities. The five cities that ranked at the top in 1996 all showed either stable or lower rates in 2000, and so did Prague. According to some of the national co-ordinators who commented on the ICVS results in their respective countries/cities, on some occasions higher rates of corruption may correspond to higher levels of awareness, thus should be welcomed as

⁶⁶ Uganda National Integrity Survey (1998), CIET International Final Report August 1998

⁶⁷ Building an Island of Integrity,(1998) Proceedings of a Workshop on National Integrity Systems in Mauritius

⁶⁸ National Integrity Survey in Public Administration, (1998), CIETInternational

⁶⁹ National Integrity Survey in Bolivia (1998), CIETInternational

⁷⁰ National Integrity Survey in Ukraine (1998) by Petter Langseth and Andrew Stone World Bank and with the Ukrainian Free Economy Foundation 1998

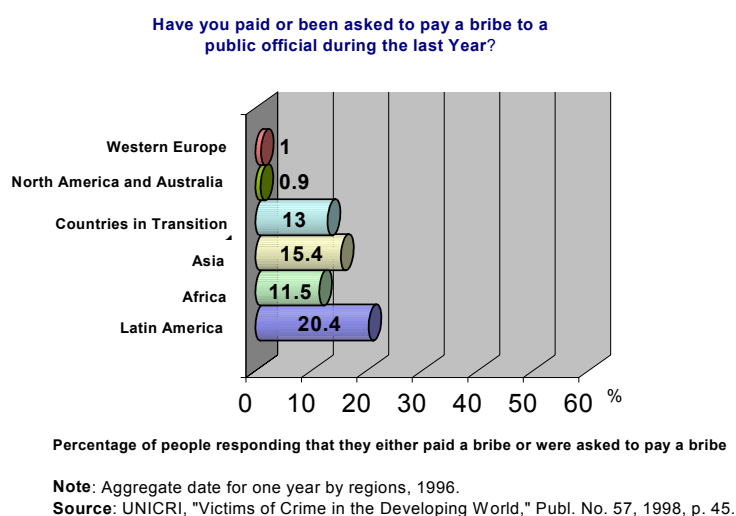
⁷¹ Service Delivery Survey, Corruption in the Police, Judiciary, Revenue and Lands Service, CIETinternational, 96

a sign of a first step in the direction of success of anti-corruption policies. According to such commentators, in some countries where in the past corruption may have been considered endemic, citizens interviewed may have failed to identify episodes of requests of bribe as corrupt behaviour, while this has become easier in the presence of aggressive awareness campaigns that highlight the citizens' rights to service delivery by the public administration. The apparent inconsistency of table 4 may be translated into variations on a scale of reactions that may vary depending on the original situation in 1996 and what has happened over the past four years. Should this prove true, a sharp decrease in corruption rates may follow.

United Nations victimization surveys have been carried out in over 60 countries. Data on experiences with solicitation of bribes by public officials, such as police and customs officers, in the course of a year are available for all world regions. Table 2 shows key results⁷² in respect thereof.⁷³

Results indicate that street-level corruption is most common in the regions of Latin America, Africa and Asia. The rate is moderately high in Eastern and Central European countries, and noticeable lower in Western Europe, North America and Australia. At the country level there is no relationship between overall victimization by conventional crime and the extent of street level corruption.⁷⁴

Respondents who had paid bribes were asked whether they had reported the incident to the police or any other authority. In countries where bribe taking (extortion) was most prevalent, very few bribe givers had reported to the police ($r=-.47; p<.010; N=26$). The inverse relationship between the level of corruption and the reporting rate suggests that in countries where corruption is common citizens have less confidence in the police and/or do not themselves consider these practices as criminal.⁷⁵



⁷² The ICVS is used as one of the sources of Transparency International Corruption Index (Lamsdorff, 2000). The ICVS rates of experience of the public with street level corruption correlate strongly with the rates of high level corruption perceived by business executives, which dominate the TI-index. CICI/UNICRI's analysis confirms that the TI corruption Index is strongly correlated with the ICVS item on street level corruption ($r=.80; p<0.00, n=38$). The high correlation validates the importance of the TI-index as a measure of real life problems rather than of perception only.

⁷³ Van Dijk, J. Does Crime Pay?, On the Relationship between Crime, Rule of Law and Economic Growth, in Forum on Crime and Society, Volume 1, Number 1, February 2001, page 2-3

⁷⁴ Van Dijk, J Does Crime Pay?, page 2-3

⁷⁵ ⁷⁵ Van Dijk, J Does Crime Pay?, page 2-3

Table 2 :Percentage of Citizens being asked by government officials to pay bribes in the course of a year

When it comes to grand corruption, the international community has been caught by surprise and the amount of money being diverted is much greater than anybody had expected. The fact that two countries, Nigeria and Russia, over a ten year period have seen more than US\$ 250 billionⁱ looted by corrupt leaders and diverted to banks in the north, the equivalent of the World Bank budget in the same period, is news to most. This will make corruption into one of the greatest challenges of our time and there is a sense that things are getting out of control since we are discovering that: (i) the amounts are much larger than expected; (ii) there seems to be stronger link to organized crime than expected; and (iii) there seems to be less political will in the north to regulate the international banks

A significant proportion of grand corruption occurrence schemes are enhanced by the capture of state institutions by organized crime groups. As a result of globalization and its related deregulation of financial transactions and widespread privatization schemes, public sectors in developing countries have ceded their jurisdictions in the regulatory and state control of areas within which organized crime has now taken economic prevalence through a “licit” economic presence in, for example, banking and energy sectors. The acquisition of these financial and business interests by organized crime groups has been achieved through mainly grand corruption schemes whereby corrupt politicians and organized crime groups merge their interests with the goal to capture the State. This represents the dark side of globalization fostering the growth of corrupt practices as seen in the graph above.

According to the New York Times,⁷⁶ as much as \$1trillion in criminal proceeds⁷⁷ is laundered through banks worldwide each year with about half of that moved through American banks. In developing countries such as Nigeria, this can be translated into US\$ 100 Billion stolen by corrupt regimes over the last 10-15 years.⁷⁸ Even if Nigeria, for example, receives the necessary help to recover its stolen assets, could it make sense to put the money back into a systemic corrupt environment without trying to first increase the risk, cost and uncertainty to corrupt politicians who will again abuse their power to loot the national treasury?

2. In some countries it might get worse before it gets better

A serious warning signal for any nation facing systemic corruption is when there is evidence that younger generation shows more tolerance towards corrupt behavior than the older segments of the population. This was one of the disturbing facts revealed by an integrity survey conducted in Ukraine in 1998⁷⁹.

⁷⁶ New York Times: February 5, 2001, Monday "Report Says Money Launderers Exploit Banks" By RIVA D. ATLAS

⁷⁷ During a recent UN Expert Meeting on money laundering in Vienna, non of the experts could give a break down of the US\$ 1 trillion resulting from drug trafficking, corruption and/or tax evasion. Some experts would probably also challenge the amount itself. The conclusion is that we still do not have access to enough facts about what is going to advice governments on how to deal with this problem. With the September 11th terror acts, there is a good chance that the issue of money laundering will be taken more seriously and that the international bank s will have collaborate more with international agencies and governments.

⁷⁸ Financial Times, London 24/7/99, Nigeria's stolen money

⁷⁹ Based on an Integrity Survey and a report prepared b y Andrew Stone, Private Sector Development Department, World Bank with the Ukrainian Free Economy Foundation and Petter Langseth of the Economic Development Institute 1998

A National Integrity Survey conducted in Ukraine in 1998⁸⁰ demonstrates that integrity is a serious and measurable problem for the quality of public services in Ukraine. On the other hand, it shows that no agency excels in service quality or integrity. It also shows that dealing with public agencies often involves multiple visits, meetings with multiple officials, and substantial delays in resolving problems or receiving services. And it demonstrates that the most dissatisfied citizens never complain—and identifies the agencies that are perceived to be least receptive to citizen complaints. In addition, it measures one important dimension of agency integrity—the propensity to accept bribes. And finally, it shows that citizens regard the national integrity of Ukraine as the worst in the region and, perhaps, the worst in the world.

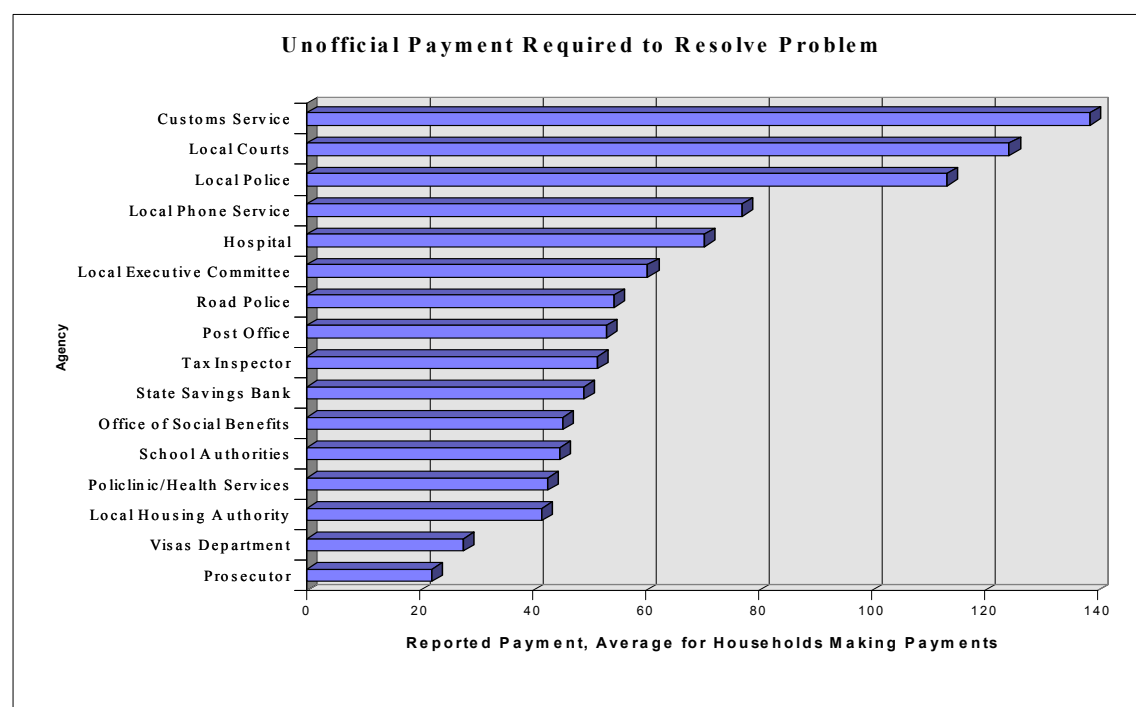


Table 3. Unofficial Payment (in Rivna) Required to Resolve Problem

The findings of the study have some clear positive implications for public sector reform and, more specifically, for a national integrity strategy:

The high correlation of rankings on agency service quality and agency integrity suggest that improving agency integrity is a critical dimension of improving the quality of services, as evaluated by the citizens itself. In other words, it matters to people not only that services are delivered, but that they are delivered honestly and fairly.

Responses provide a number of measures of service quality and integrity. These provide a baseline or benchmark by which to evaluate the impact of subsequent reforms. Equally important, they highlight the agencies which merit urgent reform, based on their poor service, slow service, or the corrupt behavior of their officials.

The findings show that citizens' attitudes and expectations also play a role in corruption. The alarming trend of younger adults being more accepting of bribery than older adults suggests that efforts must be made to shift citizens' attitudes and expectations. One part of this must

⁸⁰ Andrew Stone, Private Sector Development Department, World Bank with the Ukrainian Free Economy Foundation and Petter Langseth of the Economic Development Institute 1998

focus on improving public sector attitudes and behavior—to reduce the actual effectiveness of bribery in obtaining government services. A second part must focus on changing citizens' attitudes and behavior, to reinforce the idea that bribery is unacceptable and ineffective. To the extent that citizens try to obtain benefits to which they are not entitled, law enforcement efforts must focus on both sides as well—increasing the probability of detection and punishment for both receiving and paying bribes.

Respondents rate the performance of local government bodies somewhat higher than national level bodies. This suggests the possibility that decentralization of the financing and delivery of services may improve their responsiveness to citizen needs and their performance. But since even many local agencies rank quite poorly, it is clear that reform is required at all levels of government.

Citizens report that the leading reason they use public services is the lack of any alternative: public agencies have a monopoly on that service. Where citizens have a choice of private alternatives to public services, a significant percentage of citizens use them: for home repair, medical services, and banking a substantial percentage of respondents used private services as an alternative. This suggests the importance, wherever possible, of introducing private competition into the provision of public services.

Finally, the true magnitude of corruption and poor service is only suggested by the current study. Earlier studies of private enterprises suggest more pervasive bribery in interactions between businesses and public officials. Whether corrupt behavior is more inviting with regard to enterprises or considered more acceptable, its consequences for Ukraine's development are severe: suppressed and distorted investment, a bias against small firm development, and a severe loss of foreign investment. Thus, whatever urgency is implied by the current study is only magnified by integrity issues relating to government's oversight of businesses.

The findings pose a daunting challenge for government at a time when top leaders are expressing renewed commitment to anti-corruption efforts. On the one hand, it suggests that thus far, "Operation Clean Hands" (which began in April of 1997) has far to go in addressing the problem of corruption and abuse of public power in Ukraine. However, the current survey also provides a more concrete basis on which to target reform efforts and to measure their progress. Further empirical work could add to this understanding by providing greater detail on service quality by locality, through a larger sample and more refined questions.

B. How to Empower the Victims of Corruption

1. The integrated approach

Corruption is now understood to be a frequent phenomenon, within different degrees, within virtually every country on the planet. Within many countries, corruption is known to be so widespread and pervasive that it can only be effectively addressed using strategies which are comprehensive in nature and which successfully integrate reforms with one another and in the broader context of each country's social, legal, political and economic structures. At the international level, it is also understood that many transnational aspects of corruption exist which cannot be effectively dealt with by countries acting alone, and will instead require measures developed and implemented by the global community as a whole. As a result, the approach being taken by the United Nations Centre for International Crime Prevention (CICP) now includes not only programmes to assist individual countries which request it, but also the development of a comprehensive international legal instrument against corruption,

which is intended to bring about a high degree of global standardization and integration of anti-corruption measures.⁸¹

Within individual countries, other conditions may also be seen as desirable, and in many cases necessary to support successful strategies. These include:

Basic democratic standards. Democratic reforms are often seen as necessary elements of development projects. In the context of anti-corruption efforts basic political accountability through strengthened social control mechanisms is seen as an important control on political corruption. Since such corruption usually involves putting individual interest ahead of the public interest, the reaction of voters made aware of such abuses deters them, and if they take place allows for the replacement of corrupt politicians in elections.

A strong civil society. Generally this includes both the ability to obtain and assess information about areas susceptible to corruption (transparency), and the opportunity to exert influence against corruption where it is found through social control mechanisms. This includes fora such as free and independent media, which in detecting and publicly-identifying corruption, create political pressures against it, public budget audiences, civil service social boards, public regulation commissions, public inquiries or hearings, credible public complaints systems, and judicial monitoring systems. These mechanisms are designed to monitoring public service provision while assessing the problem of corruption, assisting in developing countermeasures, and providing objective assessments of whether such measures are effective or not.

The rule of law. As many of the controls on corruption independent courts, accountable legislatures, transparent prosecutorial capacity, and an effective police force are all necessary but not sufficient conditions to enhance the rule of law. In this type of environments laws can be enacted and enforced ensuring the translation of social preferences into public policies addressing the public and not just the private interests of the powerful and wealthy. This is true for both criminal law safeguards on corruption and for civil proceedings, which are often used to seek financial redress in corruption cases.

Policy Integration. This includes integration between anti-corruption strategies and other major policy agendas in each country, and integration between the efforts of different countries and the international community as a whole. The legislation reinforcing anti-corruption offences, for example, should not conflict with other priorities on the part of the law enforcement, prosecutors and judges expected to enforce them.

2. Requirements for anti-corruption strategies

Lessons learned from countries where anti-corruption programmes have been pilot-tested suggest the key to reduced poverty is an approach to development that addresses quality growth, environmental issues, education, health and good public sector governance. The element of governance includes, if not low levels of corruption, then the willingness to develop and apply effective anti-corruption strategies. It has been argued that development strategies must be: *inclusive, comprehensive, integrated, evidence based, non-partisan, transparent and impact-oriented*,⁸² and the same is true for anti-corruption strategies.

a. Inclusive and comprehensive

Including as broad a range of participants or stakeholders as possible raises the expectations and at the same time reduce the resistance of all those involved and therefore increases the likelihood of successful reform. This is true not only for senior officials, politicians and other

⁸¹ General Assembly resolutions 54/128 (17-12-99), 55/61 (4-12-2000), 55/188 (20-12-2000) and xxx [add GA number for report of expert group when available].

⁸² Petter Langseth, 2001, Helping Member States Build Integrity to Fight Corruption, Vienna, 2001.

policymakers, but also for general populations. Bringing victims of corruption into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making, and give a greater sense of ownership for the policies that are developed. In societies where corruption is endemic, it is these individuals who are most often affected by corruption, and who are most likely to be in a position to take action against it, both in their everyday lives, and by supporting political movements against it.⁸³

The establishment of strategic partnerships has also proven to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be the most effective against specific forms of corruption or in implementing specific strategy elements. Examples include strategic partnerships between NGOs and international aid institutions, such as the partnership between the World Bank and Transparency International or the one between Amnesty International and the US Government in Latin America which have resulted in excellent national and international anti-corruption awareness raising.

b. Integrated

While the need for integration is manifest, the means of achieving it in practice are not as straightforward, and are likely to vary from country-to-country. A major requirement is the need for the broadest possible participation in identifying problems, developing strategies and strategic elements, and effective communications between those involved once the process of implementation begins. Broad participation in identifying the needs can assist in identifying patterns or similarities in different social sectors that might be addressed using the same approach.

Broad participation in developing strategies ensures that the scope of each element is clearly defined, and the responsibility for implementing it is clearly established, but that each participant is also aware of what all of the others are doing and what problems they are likely to encounter.⁸⁴ Plans to develop legislation, for example, should also give rise to plans to ensure that law enforcement and prosecutors are prepared to enforce the laws and that they will have the expertise and resources to do so when they are needed. These conditions would assure that laws are not just enacted but also enforced through appropriate implementation mechanisms. Effective communications between the participants – using regular meetings for example – can then ensure that elements of the strategy are implemented consistently and on a coordinated schedule, and can deal with any unforeseen problems that may arise during the process.

c. Transparent

Transparency in Government is widely viewed as a necessary condition both to effectively control corruption, and more generally for good governance. Populations should have a right to know about the activities of their government to ensure that public opinion and decision-making (e.g., in elections) is well-informed. Social control mechanisms involving the operational participation of prestigious civil society representatives do usually serve this purpose. For example, social control boards monitoring court-related activities have reduced perceptions of occurrences of bribery by 59 percent within a period of two years in Costa

⁸³ One example of this is Hong Kong's Independent Commission Against Corruption (ICAC). Over the past 25 years it has conducted workshops involving almost 1 % of the population each year. This gives those consulted input, allows policy-makers to gather information, and generally raises popular awareness of the problem of corruption and what individuals can do about it.

⁸⁴ United Nations pilot projects have successfully used national integrity systems workshops for this purpose.

Rica while police commissions including members of civil society have reduced perceptions of corruption by 78 percent in San Jose (California) in the United States.⁸⁵

Such information and understanding is also essential to public ownership of policies that are developed, and this is as true for anti-corruption policies as it is for any other area of public policy. A lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance when in fact broad enthusiasm and participation is needed. It can also lead to a loss of credibility and the perception that the programmes involved are corrupt or that they do not address elements of government which may have succeeded in avoiding or opting out of any safeguards. In societies where corruption is endemic, this will generally be assumed, effectively creating a presumption against anti-corruption programmes which can only be rebutted by their being clearly free of corruption and by publicly demonstrating this fact. Where transparency does not exist, moreover, popular suspicions might well be justified.

d. Non-Partisan

The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most countries. This makes it critical that anti-corruption efforts remain politically neutral, both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be a priority. To the extent that anti-corruption efforts cannot be made politically neutral, it is important that transparency and information about the true nature and consequences of corruption are major factors in an anti-corruption strategy, because these generally operate to ensure that corruption is seen as a negative factor in domestic politics.

Multi-partisan support for anti-corruption efforts is also important because of the relationship between competition and corruption. The bright side of competition has been thoroughly researched by economists. Yet, there is also a dark side of competition that has not received similar attention. Just as competition in the private sector can sometimes lead companies to resort to bribery to gain advantages in seeking business, competition between political factions can also sometimes lead participants to resort to political corruption in order to obtain or maintain advantages, or to offset real or perceived advantages on the part of other factions. Common problems in this area include the staffing of public-service positions with political supporters to reward them and ensure further support and to influence areas public administration in their favor. The existence of regulatory control coupled with social control mechanisms can diminish the occurrence of these types of competition-related corruption.

e. Evidence based and Impact oriented

It is important that strategies be based on concrete and valid (measurable) evidence at all stages, including preliminary assessments of the extent⁸⁶ of corruption in order to establish clear baselines and the assessment of whether or not objectives have been achieved. In countries where corruption is endemic, the external gathering or validation of this evidence is often seen as an important factor in the credibility of anti-corruption policies. The United Nations Global Programme against Corruption has established a *comprehensive country assessment* to assist in this process, where such assistance is requested by Governments. This includes a review of all available information about relevant factors to establish information

⁸⁵ Refer to Buscaglia, Edgardo (2000) "Judicial Corruption in Developing Countries: Is Causes and Economic Consequences" *Essays in Public Policy*. Hoover Institution. Pal Alto, CA: Stanford University Press.

⁸⁶ Types, levels, location, cost and causes of corruption

as a “base-line” for future comparison and an initial qualitative and quantitative assessment of the forms and general extent of corruption (see below).

Sources of information may vary, but generally include opinion surveys, interviews with relevant individuals such as officials or members of companies which deal with the government, focus group discussions about the problem of corruption and aspects of the problem or measures against it which may be unique to the country involved, the preparation of case-studies, an assessment of anti-corruption laws and the agencies which are intended to monitor, prevent and/or prosecute corruption cases, and assessments of other key institutions. More general assessment of strengths and weaknesses in civil societies, national cultures or other areas, which may be important in the development of a successful and effective anti-corruption strategy, is also critical. Many factors will vary from country-to-country. This makes it important that comprehensive country assessments be custom-tailored to each country, and that much of the actual design be done domestically.

It is important that the process of gathering and assessing evidence be seen as an ongoing process and not as a one-time event. One term used to describe this is “action research”, which has been described as embracing “principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation.”⁸⁷. Common among these is the concept of using dialogue between different groups to promote change through a cycle of evaluation, action and further evaluation, as illustrated in Figure 1 below.

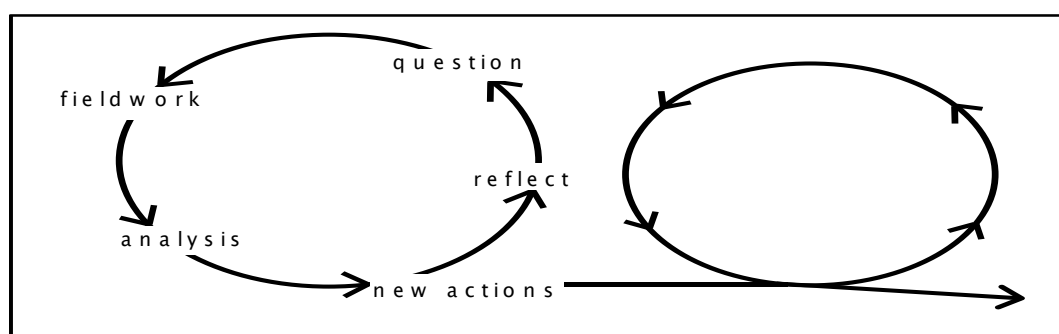


Figure 1: Cyclical Research Process⁸⁸

A great deal of literature exists outlining and reviewing the concept of “Action Learning⁸⁹”. Common among most is the concept of creating dialogue among different groups to promote change through a cycle of evaluation, action and further evaluation, an iterative process illustrated in Figure 1 below. In particular, the United Nations Global Programme against Corruption applies the action learning method both in the piloting of its new approaches and its dissemination of lessons learned from such pilots and experiences elsewhere. The Programme arose from a need to provide assistance to those countries and governments seeking to reduce corruption and to build integrity.

⁸⁷ Kaye Seymour-Rolls and Ian Hughes, “Participatory Action Research: Getting the Job Done,” Action Research Electronic Reader, University of Sydney, 1995.

⁸⁸ Yoland Wadsworth, “What is Participatory Action Research?” Action Research International, Paper 2, 1998. Available on-line: <http://www.scu.edu.au/schools/sawd/ari/ari-wadsworth.html>.

⁸⁹ Action Research or Action Planning

The Centre for International Crime Prevention (CICP) through its Global Programme against Corruption (GPAC) facilitates and assists client countries in the their pursuit of building integrity to fight corruption. In fostering collaborative efforts among all stakeholders in a given society, GPAC helps to draw out the shared goals and purpose of government, public and private sectors using national and local integrity workshops. Such goals are identified through a variety of instruments to be discussed below which include comprehensive assessments of corruption, national integrity systems workshops, national and local integrity strategies and anti-corruption action plans addressing preventive, institutional development, awareness-raising and enforcement measures. Each of these instruments is predicated upon broad-based participation both to maximize the local ownership and to increase the objectivity and relevance of the reform.

It is critical that emphasize is placed on the impact of the program and that clear and realistic goals with measurable impact indicators be set and that all participants in the national strategy be aware of these goals and the status of progress made in achieving them. The complexity of the corruption problem and the difficulty in gathering valid “baseline” and progress data make this difficult, but it is nonetheless critical. Initial evidence is used to provide the basis for comparison and to set initial goals, while periodic assessments of what has been accomplished monitors progress, identifies areas which may need more attention or a different approach, and supports ongoing revision of the initial goals of the programme. Validated evidence can also play an important role in reforms in other areas. Evidence that corruption is being reduced supports confidence in national economies, for example, and evidence of the nature and consequences of political corruption will lend support to democratization and similar political reforms.

3. Lessons Learned from Experiences Helping to Empower Victims

During the past ten years, policymakers and scholars have devoted increasing attention to the causes and impact of corruption on public and private socio-economic affairs. As a way of summarizing the issue, the most relevant applied policy studies show that corrupt practices are encouraged by the following factors:⁹⁰

- The lack of free access by citizens to government-related public information;
- The lack of systems to assure relative transparency, monitoring and accountability in the planning and execution of public sector budgets coupled with the lack of social and internal control mechanisms in the hands of civil society and autonomous state auditing agencies respectively;
- The lack of public sector mechanisms able to channel the social preferences and specific complaints of the population to the agencies involved in those complaints;
- The lack of social and internal mechanisms applied to the quality control of service delivery; and
- The lack of social control mechanisms aimed at preventing grand corruption schemes usually seen when the state’s policies are “captured” by vested interests.

At the same time, some of the most important policy lessons learned in the course of the last decade show that:

⁹⁰ For a review of these factors refer to (i) Petter Langseth, 2000. Integrated vs Quantitative Methods, Lessons Learned; 2000 (presented at NORAD Conference, Oslo, 21 October 2000). (ii) Alberto Chong y César Calderón. 1998. “Institutional Efficiency and Income Inequality: Cross Country Empirical Evidence” Mimeograph, World Bank, Washington, D.C.; (iii) Edgardo Buscaglia. 1998. “Law and Economics of Development” in Encyclopedia of Law and Economics. London and Boston: Edward Elgar Press. (iv) Alberto Ades y Rafael di Tella. 1996. “The Causes and Consequences of Corruption: A Review of Recent Empirical Contributions”, IDS Bulletin 27.

- Curbing systemic corruption is a challenge that will require strong measures, greater resources and more time than most politicians and “corruption fighters” will admit or can afford. Very few anti-corruption policies, measures and/or tools launched today are given the same powerful mandate and/or financial support as the often-quoted ICAC in Hong Kong⁹¹.
- Raising awareness without adequate enforcement may lead to cynicism among the general population and actually increase the incidents of corruption. Citizens who are well informed through the media about types, levels and the location of corruption but who have few examples of reported cases where perpetrators are sent to jail, might be tempted to engage in corrupt acts where “high profit and no risk” appears to be the norm. It is therefore essential for any anti-corruption strategy to balance awareness raising with enforcement. The message to the public must be that the misuse of public power for private gain is: (i) depriving the citizens of timely access to government services; (ii) increasing the cost of services; (iii) imposing a “regressive tax” on the poorest segments of the population; (iv) curbing economic and democratic development; and (v) a high risk low/profit activity (e.g. corrupt persons are punishable by jail sentences and fines). The challenge is how to best communicate this message to the population at large.
- Social control mechanisms are needed in the fight against corruption.⁹² These mechanisms must not only include strategic anti-corruption steering committees but also operational watchdogs working within government institutions composed of civil society and government officials working together. These operational mixed watchdog bodies must cover monitoring and evaluation of local and central government affairs such as budget-related policies, personnel-related matters, public investment planning, complaint matters, and public information channels. The next two sections provide specific examples of how these mechanisms have already rendered positive results.
- Public trust in anti-corruption agencies and in their policies are essential if the public is to take an active role in monitoring the performance of their government. In a survey conducted by the ICAC, in 1998, 84% (66% in 1997) of the interviewees stated that they would be willing to submit their name when filing a complaint or blowing the whistle on a corrupt official or colleague. It is even more impressive that this trust relationship that has been built up systematically over twenty-five years has not changed much since Hong Kong joined China in 1996. If anything, when surveyed about what they fear most by joining China, the public in Hong Kong considered increased corruption to be one of the major threats.

a. Examples of how countries have applied best practice to curb corruption

This section draws from these lessons and includes examples of how countries have applied them and succeeded in reducing their levels of systemic corruption within specific state institutions through combining good public sector governance and social control mechanisms. Specifically, perceptual and objective indicators are shown below measuring the differences in the frequencies of corrupt practices and institutional effectiveness before and after reforms were implemented in five countries.

The failure of the State to internally control corrupt practices and its failure to impede the capture of policy-making bodies by the very vested private/public interests fostering corruption, has generated the need to incorporate civil society safeguards, designed to complement the state’s auditing capacities and to monitor specific institutions of the state on an ordinary basis. These social control mechanisms have been normally focused on budget planning and on public service-related areas. The record of its success is mixed. Provided its

⁹¹ Petter Langseth (2001) Value Added by Partnerships in the Fight Against Corruption, OECD’s third Annual Meeting of the Anti Corruption Network for Transition Economics in Europe, Istanbul, March 20-22, 2001

⁹² Edgardo Buscaglia (2001), Access to Justice and Poverty: Paper Presented at the World Bank Conference on Justice, St. Petersburg, Russia, July, 2001

members receive the appropriate training, the indicators of social control effectiveness show these kind of impressive results shown below. These social control mechanisms operate as bodies that interact with specific agencies of the public sector and are entrusted with the monitoring of public agencies' performance and the channeling of suggestions and complaints related to service delivery. As such, these social control mechanisms do follow the integrated approach to empower victims of corruption, as explained in Part B above. Social control "panels" or boards are usually composed of civil society representatives elected by specific neighborhood councils. In some cases, these representatives share the board with representatives of the state. The civil society representatives usually show a track record for integrity, social activism, and experience in dealing with the areas to be monitored by the social control board (e.g. utilities). Civil society representatives' roles, characteristics, responsibilities, and attributes are frequently formally legalized through either local (Venezuela) or national (Bolivia) laws.

The reform-related experiences of Chile, Costa Rica, Singapore, Venezuela, and the United States provide best practices on how these civil society mechanisms have an impact on the frequency of corruption, transparency, access to institutions, and effectiveness in service delivery. Attention is invited to the indicators of perceived frequencies of corruption, access to institutions, effectiveness in service delivery, and transparency within the police force in the city of San Jose (USA), the municipal governments in Merida (Venezuela) and Santiago (Chile), and the judicial sectors in Costa Rica and Chile. Here, we can observe these impact indicators before and after selected internal institutional reforms were introduced to address the following areas:

- simplification of the most common administrative procedures;
- reduction of the degree of administrative discretion in service delivery;
- implementation of the citizens' legal right to access information within state institutions; and
- the monitoring of quality standards in public service delivery through social control mechanisms.

Reforms in these areas were implemented in cases monitored by social control boards where at least half of its membership was composed of civil society representatives who were already trained in technical aspects dealing with the institutions involved. In no case, civil society representatives were selected by the state and, in all cases, the social control boards included representatives from the institutions to be monitored. Surveys and institutional reviews were conducted in order to gather the perceptual and objective indicators respectively. The results from implementing reforms in the four aforementioned areas are as follows⁹³:

⁹³ These pilot experiences were all conducted through different national and international institutions. In fact, Chile's municipal pilot was technically supported by the Inter American Development bank between 1999-2001; Costa Rica judicial pilots were all self financed; Chile's prosecutors training and pilot in the border areas with Argentina and Brazil were technically supported by the US Government DOJ; and Venezuela municipal pilot in campo Elias was technically supported by the World Bank Institute between 1997-1999. For more references and details see *UN Anti-Corruption Tool Kit* (2001); and Buscaglia, Edgardo (2001) *Judicial Corruption in Developing Countries: Is Causes and Economic Consequences* *Essays in Public Policy*. Hoover Institution. Pal Alto, CA: Stanford University Press.

CHART 1

TWO-YEAR AVERAGE PERCENTAGE CHANGES IN CORRUPTION-RELATED INDICATORS BEFORE AND AFTER SOCIAL CONTROL MECHANISMS

(1990-2000)

	Frequenc y of corruption	Access to Institutio ns	Effective ness	Transpar ency	Administ rative Complex ity
Chile (Municipality – Santiago)	-10.5%	31%	29%	13.7%	-5.2%
Chile (national judicial Branch)	-25.9%	9%	12.9%	6%	-22.4%
Chile (Prosecutors Office – Special Crimes Unit)	-18.1%	11.4%	5.9%	7.2%	1.8%
Venezuela (Municipality – Campo Bias)	-9.1%	15.9%	7.3%	7.5%	9.5%
U.S. (Police Department – San Jose)	-7.4%	27.1%	9.4%	8.4%	-9.5%

Chart 1 above shows the two-year percentage changes in perceived frequencies of corruption, effectiveness, transparency, access to institutions, and the users' perspective of administrative complexity applied to the services provided by the municipal services in Chile and Venezuela; judicial services in Costa Rica; prosecutors' services in Chile, and police services in the city of San Jose, CA (USA). The percentage changes reflect two-year changes at any time during the period 1990-2000. These perceived frequencies were provided by direct users of these services at point of entry (i.e. at the exit point after interacting with the public sector institution involved). By observing the Chart 1 above, one can observe significant two-year drops in the frequencies of perceived corrupt acts, defined here as occurrences of bribery, conflict of interest, influence peddling, and extortion. As one can see, frequencies of corruption decrease ranging from 25.9 percent in Costa Rica's judicial sector to a minus 7.4 percent in the City of San Jose's police force. Moreover, an additional 15.9 percent and 31 percent of those interviewed in Venezuela and Chile respectively perceived improvements in the access to municipal services. The two-year increases in the Chilean users' perception of improvements in the effectiveness of special prosecutors and in the Municipality of Santiago's service delivery range from 5.9 to 29 percent respectively. One can see that the two-year increases in the proportion of those users perceiving improvements in the transparency applied to service-related proceedings range from 13.7 percent increase in the municipality of Santiago (Chile) to a 6 percent increase in the proportion of those interviewed who perceive a significant improvements within Costa Rica's court service delivery.

A large number of studies have already shown a relationship between increases in an institution's administrative complexity and higher frequencies of corruption.⁹⁴ Each of the

⁹⁴ Refer to Buscaglia, Edgardo (1996), *Law and Economics of Development*, New Jersey: JAI Press

institutions included in Chart 1 above provided data to calculate the differences in the administrative complexity applied to the most common procedure followed by users in each institution (e.g. building permits in the municipality of Santiago, Chile). The objective (hard data) indicator for each of the institutions involved here was calculated through a formula taking into account three factors: (i) average procedural times; (b) number of departmental sections involved in processing the service; and (c) number of procedural steps needed by users in order to complete the procedure. The changes in this administrative complexity indicator were calculated for the same 1997-99 period in all countries. The percentage change decreases are shown in the last column of the Chart above. Clearly, we see changes ranging from minus 22.4 percent in Costa Rica's courts to a minus 1.8 percent decrease in administrative complexity in Chile Special Prosecutors Office

It is noteworthy that in all these cases, the institutional heads of the pilots selected were all known for their integrity, political will, and capacity to execute previous reforms. It is key to previously select the most adequate ground to implement these reforms in an environment within which civil society representatives are also willing and able to receive technical training and possess a basic level of organization. In most of these cases, social control boards were not just in charge of monitoring the above indicators, but they were also responsible for channeling and following any users' complaints dealing with service delivery. These bodies met on a weekly to monthly basis. In all cases, local or national laws were enacted with the solo purpose of providing the institutional identity and formal legitimacy to these bodies. Finally, these social control boards provide an operational and implementation arm to the objectives and policies validated by civil society through national or local integrity meetings, focus groups, and national and municipal integrity steering committees. In this respect, it is noteworthy that Hong Kong's well-studied ICAC-related Advisory Boards represent a more passive form of social control in comparison to the case studies mentioned above.

b. Challenges to measure the impact of anti-corruption strategies

These social control boards were in all cases responsible for monitoring the data gathering and analysis during and after policy reforms were implemented. The indicators shown above are just a beginning in the monitoring of anti-corruption reforms. There are many challenges to accurately measuring the impact of anti-corruption strategies, policies and measures. Monitoring efforts by the public need to be as accurate as possible given the fact that specialized skills and access to relevant data can be costly and difficult to obtain.

Firstly, collected data must be analysed by a competent and independent institution capable of extracting the true essence of the data collected which can then be analysed highlighting differences and identifying so-called "best practices". To do this in a credible manner, availability of resources will always be an issue. This holds true even for monitoring mechanisms based on international instruments, since it is not always evident that the Secretariats of the organisations concerned have the necessary resources to ensure effective support and analysis of these mechanisms.

Secondly, current international monitoring mechanisms are unevenly distributed throughout the world. In some regions, countries tend to participate in more than one monitoring exercise, while in other parts of the world there are no operational monitoring mechanisms at all, as, for example, in most parts of Asia. Of course, the other extreme involves instances where there are multiple mechanisms applicable to the same region, and the challenge arises as to how to avoid duplication of effort.

Thirdly, monitoring can never be an end in itself. Rather, it should be an effective tool to bring about changes in international and national policies and improve the quality of decision making. If the monitoring exercise is linked to an international instrument, the primary objective should be to first ensure proper implementation of the technical aspects of the instrument and then the practical impact of its implementation. Monitoring can thus serve

two immediate purposes. It helps to reveal any differences in interpretation of the instruments concerned and it can stimulate swift and effective translation of the provisions of these instruments into national policies and legislation. If it is determined that incomplete or ineffective implementation has occurred, sanctions can be imposed to motivate stronger efforts at success. Therefore, accurate monitoring is critical with respect to launching any successful anti-corruption initiative.

In the case of the OECD-Convention, for example, a built-in sanction requires that reports of the discussions on implementation be made available to the public. Such publicity can be an important mechanism in helping promote more effective measures. Reference can be made in this regard to the publicity surrounding the perception indices of Transparency International. Even though these indices simply register the perceived level of corruption as seen by primarily the international private sector, they gain wide publicity. However, inasmuch as the TI indexes are somewhat useful, a distinct disadvantage is that they: (i) do not always reflect the real situation, (ii) do not involve the victims of corruption in the countries surveyed; (iii) offer little or no guidance of what could be done to address the problem, and (iii) can discourage countries from taking serious measures when their anti-corruption programme efforts are not seen as being successful by an improved score against the TI-Index.

Fourthly, monitoring exercises cannot be separated from the issue of technical assistance and it is critical that monitoring not only addresses levels of corruption, but also its location, cost, cause and the potential impact of different remedies. Furthermore, since the trust level between the public and anti-corruption agencies is critical for the success of anti-corruption efforts, public trust levels should also be monitored.

It may be the case that participating countries agree on the need for implementing the measures identified as "best practices", but lack financial, human or technical resources to implement them. Under those circumstances, monitoring exercises would be much more effective if they were accompanied by targeted assistance programmes. It should be added, however, that not all measures require major resources, especially in the context of preventative measures where much can be done at relatively low cost.

Most of the data collection done by the traditional development institutions is based on an approach that can be described as "data collection by outsiders for outside use". Generally conducted by external experts, international surveys tend to be done for external research purposes. International surveys help spark debate about those countries which fare badly. Such surveys help to place issues on the national agenda and keep it at the forefront of public debate. However, international surveys are comparative and fraught with statistical difficulties.

One value, however, has been that they have highlighted the need for national surveys, and these are now being undertaken with increasing thoroughness. With public awareness of levels, types, causes and remedies of corruption dramatically improved over the last 5 years, the utility of collecting data about corruption is to increase the accountability of the state towards its public by establishing measurable performance indicators that are transparently and independently monitored over time.

4. Other Measures to Empower the Victims of Corruption

The policy proposals presented in this paper are aimed at empowering individuals, communities, and governments by disseminating knowledge. This, in turn, results in greater government accountability and transparency, which is integral to building institutional capacity and improving service delivery. This program helps governments work more efficiently and helps the entire society participate in building an enabling environment for equitable and sustainable growth resulting in timely and cost effective services delivered to its public.

Organizations in the public and private sector at the local and national level must adopt various measures if they are to achieve success in the fight against corruption. Economic development, democratic reform, a strong civil society with access to information and presence of the rule of law appears to be crucial for the effective prevention of corruption. The following is a list of measures or initiatives that should be developed and implemented at various levels within the public and private sectors.⁹⁵ The measures must address policy and systemic issues as well as the behavioural and cultural aspect of change.

In this context, three strong-existing internal forces have been harnessed to drive the anti-corruption movement: decentralization, high-level political will, and the introduction of enforceable internal and external checks and balance mechanisms.

Decentralization with strong social control. Local authorities tend to be more amenable to rapid change and more open to broader participation. The recent emphasis on integrity planning meetings at the district level in Uganda coincides with the increasing importance of the district in delivering decentralized services. The participatory workshops at the district level are experimenting with techniques for developing implementable and realistic action plans for the most important public services such as health, education, police and judiciary.

Political will at national and municipal level. The will to fight corruption at both national and subnational level has been observed to ebb and flow with the electoral cycle. National and municipal leaders facing an election are more susceptible to civil society and international demands and more motivated to lead national or municipal efforts against political corruption. The longer a leader has been in power, the more she/he comes under pressure from peers, party, colleagues, clan and family members to tolerate corrupt behavior.

High-level political will is maximized when there is strong pressure from civil society. Outside facilitation can help: staff from international aid institutions and TI's involvement has been highly visible and sustained. The administration is aware of the importance of the perceived integrity of the country for both private sector investment and continuing involvement of the international aid community.

Increased checks and balances. The third internal force that can increase the risk for public servants who intend to misuse their public powers for private gain, is an empowered civil society. By systematically feeding the country assessment back to the civil society through district and sub-county integrity meetings, the civil society was empowered to ask questions and demand change. The empowerment through increased awareness was especially effective in Uganda when the civil society got district-specific information that could be compared with a national average.

5. Focusing on the Judicial Sector: Increased Access to Justice

Democracy functions as a system with formal and informal institutional interrelated mechanisms serving the purpose of translating social preferences into public policies. Corrupt practices within the public sector distort this translation of social preferences into public policies and, therefore, hampers the development of democratic systems. Enhancing the effectiveness of society's dispute resolution mechanisms is also a way to address social preferences through public policies within the judicial domain.⁹⁶ Judiciaries are entrusted with translating social preferences instilled in the laws into the judge's legal interpretation contained in court rulings. Therefore, it is necessary to ensure that the institutions responsible

⁹⁵ Petter, Langseth. presentation at the 9th IPAC conference in Milan, November 1999

⁹⁶ See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press

for the interpretation and application of laws are able to attract those parties who can't find any other way to redress their grievances and solve their conflicts.

In order to avoid cultural, socio-economic, geographic, and political barriers to access the court system, the judiciary must adopt the most effective substantive and procedural mechanisms capable of reducing the transaction costs faced by those seeking to resolve their conflicts, including the reduction of corrupt practices. If barriers to the judicial system, caused by corrupt practices, affect the socially marginalized and poorest segments of the population, expectations of social and political conflict are more common, social interaction is more difficult, and disputes consume additional resources⁹⁷.

It is clear by now that a centralized and state-monopolized "top-down" approach to law making and conflict resolution has caused social rejection of the formal legal system among an increasing proportion of marginalized segments of the populations in developing countries who perceive themselves as "divorced" from the formal framework of public institutions. This "divorce" reflects a gap between the "law in the books" and "law-in-action" found in most developing countries. This "top-down" institutional legal framework, that has shown scarce capacity to translate the law in the books into "law in action" for dispute resolution purposes, imposes corruption-fostering excessive procedural formalisms and administrative complexities on court users. This state of affairs damages the legitimacy of the state, hampers economic interaction, and negatively affects the poorest segments of the population.⁹⁸ This kind of environment also blocks the filing and resolution of relatively simple cases brought by the socially weakest segments of the population. As a result, large segments of the population, who lack the information or the means to surmount the significant substantive and procedural barriers, seek informal mechanisms to redress their grievances. Informal institutions do provide an escape valve for certain types of conflicts. In this context, social control mechanisms applied to the judiciaries have emerged in several countries.

Judicial sectors within counties affected by systemic corrupt practices are ill-prepared to foster social development. In these cases, the most basic elements that constitute an effective judicial system are missing. These elements include: (a) predictable judicial discretion applied to court rulings; (b) access to the courts by the population in general regardless of their income level; (c) reasonable times to disposition; and (d) adequate remedies.⁹⁹ The corruption related increasing time delays, backlogs, and uncertainty associated with expected court outcomes have hampered the access to justice to those court users who lack the financial resources required to face the licit and illicit litigation costs.

The subset of five countries, shown below in Chart 2, have implemented social control boards as part of their judicial reform drives. These social control boards, composed of civil society representatives at the local level, have varied in nature and scope. The numerical results

⁹⁷ Norms are here understood as coordinating mechanisms for social interaction. Refer to Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29; and to Cooter, Robert (1996) "The Theory of Market Modernization of Law", *International Review of Law and Economics*, Vol. 16, No 2, pp. 141-172.

⁹⁸ See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29

⁹⁹ Buscaglia, Edgardo, Ratliff, William, and Dakolias, Maria (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press

shown in Chart 2 are preliminary conclusions of a recent field jurimetric study.¹⁰⁰ For example, in some countries these civil society boards were proposed as simply civil society-based court-monitoring systems (Singapore and Costa Rica) and in other cases, these bodies were recognized and performed their conflict resolution function as alternative –informal mechanisms (in the cases of Chile, Colombia, and Guatemala).

For example, in the case of Colombia, 3.7 percent of those interviewed for the CILED survey showed proof that they have attempted to access formal court- provided civil dispute resolution mechanisms, (compared to 4.9 percent of the same poorest segment of the population in urban areas nationwide) while just 0.2 percent of the sampled households (i.e. 9 out of 4,500 households) responded that they were able to obtain some type of final resolution to their land or family disputes (due involving mainly to title-survey defects and alimony cases) through the court system. Colombia also shows that 91 percent of those demanding court services during the period 1998-99 were within the upper ranges of net worth. While just 9 percent of those court users were in the lowest 10 percent range of measurable net worth within the region. In contrast to this low demand for court services, Colombia also shows that 8 percent of those interviewed in 1999 and 7.5 percent of those interviewed in 2000 gave specific detailed instances of using community-based mechanisms (mostly neighborhood councils and complaint panels) in order to resolve land-title-commercial and/or family civil disputes. This indicates a gap between formal and informal institutional usage through community community-based conciliation and neighborhood complaint boards that is common in the other four countries sampled here. In the case of Colombia, social judicial control bodies r in the form of a so-called “Complaint Panel or Board” and composed of three “prominent local residents” selected by Neighborhood Councils (“Parroquias Vecinales or Comunas”) and as such, they do enjoy a high level of popular-based legitimacy. Although the Boards’ decisions are not legally binding, Their decisions do receive tacit approval by municipal authorities. but the Boards’ decisions are not legally binding. In fact, Survey Bureaus usually formally refer to the Boards’ findings in order to substantiate their own rulings. This clearly indicates the local Governments’ recognition of the Boards’ rulings. Decisions are not appealed and social control mechanisms usually prevail in the enforcement of the Boards’ decisions.

In all cases, these civil society-based bodies emerged and were “recognized” by governments as a result of the increasing gap between the demand and supply of court services. At the same time, these bodies served the purpose of monitoring the progress of judicial reforms. Specifically, these civil society-based boards have performed two functions within the judicial domain. These are:

in some countries, such as in Chile, Colombia, Costa Rica, Singapore, and Guatemala, these boards have served the purpose of resolving civil disputes (mostly family and commercial related case types) through informal means; and

in Costa Rica and in Singapore, these social control boards have also monitored the functioning of pilot courts during judicial reforms.

The performance of the first role specified has clearly enhanced access to justice in civil cases and, judging from the indicators gathered and shown below, they have also reduced the frequency of perceived corruption and institutional legitimacy.

¹⁰⁰ The study covers ten countries in Africa, Asia, and Latin America. This study was designed and conducted at the Center for International Law and Economic Development-CILED- at the University of Virginia School of Law (USA).

CHART 2

TWO-YEAR PERCENTAGE CHANGES IN CORRUPTION-RELATED INDICATORS BEFORE AND AFTER SOCIAL CONTROL MECHANISMS

	Frequency of Corruption	Access to Institutions	Effectiveness	Transparency	Administrative Complexity
Chile (National Civil Courts – 3 pilots)	-28.7 %	19%	5%	93%	-56%
Colombia (3 pilots)	-2.5%	16.4%	8.2%	17.4%	-12.5%
Costa Rica (12 National Courts)	-7.9%	6.2%	3.7%	18.5%	-23.8%
Guatemala	-9.4%	32.6%	9.5%	41.9%	-12.7%
Singapore	-6.3%	8.4%	9.2%	8.4%	-12.7%

It is clear from Chart 2 above that all percentage indicators of institutional performance, captured through court surveys, have shown significant improvements. The social control boards were designed with variable numbers of civil society representatives and in three cases (in the cases of Chile, Colombia, and Guatemala) these represented alternative mechanisms to resolve family and commercial disputes mostly in rural regions where poverty concentrates the most. Yet, the indicators above refer to improvements in pilot courts experiencing administrative, organizational, and procedural reforms (to be specified in the next section) in jurisdictions within which informal mechanisms to resolve disputes civil society monitoring bodies were also introduced and implemented. On the other hand, in these same countries, there were also pilot courts introducing the same types of organizational, administrative, and procedural reforms in areas where no informal monitoring and informal dispute resolution mechanisms existed. One could test the hypothesis that pilot courts monitored by civil society and within areas where informal dispute resolution mechanisms exist (e.g. municipal area of San Pablo de Borbur in Colombia) perform better than other courts subject to the same internal reforms but not subject to civil society monitoring. Two country-experiences give us the chance to compare court reforms in areas with no civil society components to court reforms with civil society components. The results from our next chart are striking. When one compares courts undergoing the same internal organizational, administrative and procedural reforms in regions with NO social control boards with pilot courts implementing the same types of reforms in regions with social court-control boards, we find significant differences in the indicators of perceived frequencies of corruption access to justice, and transparency of court proceedings. The differences are shown in the Chart immediately above covering the period 1990-2000.

CHART 3

DIFFERENCES IN PERCENTAGE INDICATORS BETWEEN COURTS WITH AND WITHOUT SOCIAL CONTROL MECHANISMS

(the percentages shown below are computed for each category-column- by subtracting the average indicator for the courts with social control from the indicators from the board without social control)

	Frequency of Corruption	Access to Institutions	Effectiveness	Transparency	Administrative Complexity
Colombia 3 pilots	-5.3%	7.1%	4.9%	10.2%	0.2%
Guatemala 7 pilots	-3.2%	17.4%	5.2%	31.2%	-0.5%

The numerical results are based on surveys conducted with court users at point of entry. Survey results indicate that court users, drawn in this case from the lowest income levels (i.e. bottom quartile in each region) do experience significant differences in their experiences when comparing courts with and courts without social control. This analysis was only performed in two of the ten countries selected for the aforementioned jurimetric study. Yet, the differences in the perceived frequencies of corruption when comparing courts with social control and those without social control are striking (and tested for significance through the Friedman test). For example, the access to institutions perceived by court users in Guatemala's courts subject to social control is 17.4 percent higher than in courts not subject to social control bodies such as the ones described above. The same applies to differences in perceptions of transparency in court proceedings, differences in administrative complexity, and to the differences in the effectiveness applied to the provision of court services.¹⁰¹

Increased Integrity in the Courts

When judiciaries are constrained by corrupt practices, the biased interpretation and application of the laws impairs one of the most potentially effective tools in the fight against corruption, i.e. the courts. This represents the most damaging corruption of all types of corruption. Judicial corruption can be conceived as the use of adjudicational authority for the private benefit of court personnel in particular or/and public officials in general. This distorted use of the court system undermines the rules and procedures to be applied in the provision of court services. Judicial corruption in most developing countries takes many forms. For the purposes of simplifying our explanation below, let us classify court-related corrupt behavior into two types. Within the following two corruption types, we can include many well-known practices:

¹⁰¹ The survey conducted by CILED at the University of Virginia focuses on the poorest segments of the populations in the five countries sampled.¹⁰¹ The CILED study also aims at comparing the poorest households' net worth (i.e. households within the bottom 20 percent of the regional socioeconomic range) before and after their access to formal and informal conflict resolution mechanisms in cases dealing with land title-survey-related disputes and alimony payments. We then seek precise indications of how and why dispute resolution mechanisms affect the average household's net worth as one of the possible determinants of poverty conditions. The sample sizes all cover between 5 and 10 percent of all court users within each pilot court selected. Differences in indicators and their statistical significance were tested by using the Friedman test and other standard regression techniques. These differences are all statistically significant at the 5 percent level. See Buscaglia, Edgardo. 2001. Paper Presented at the World Bank Conference on Justice. St. Petersburg, Russia. July 3-6, 2001

♦ *administrative corruption* occurs when court administrative employees violate formal administrative procedures for their private benefit. Examples of administrative corruption include cases where court users pay bribes to administrative employees in order to alter the legally-determined consideration and proceedings of court files and discovery material, or cases where court users pay court employees to accelerate or delay a case by illegally altering the order in which the case is to be attended by the judge, or even cases where court employees commit fraud and embezzle public property or private property in court custody. These cases include procedural and administrative irregularities.

♦ The second type of abusive practices involves cases of *operational corruption* that are usually linked to grand corruption schemes where political and/or considerable economic interests are at stake. This second type of corruption usually involves politically-motivated court rulings and/or undue changes of venue where judges stand to gain economically and career-wise as a result of their corrupt act. These cases involve substantive irregularities affecting judicial decision-making. It is interesting to note here that all countries, where judicial corruption is perceived as a public policy priority, experience a mix of both types of corruption. That is, usually the existence of administrative court corruption fosters the growth of operational corruption and vice versa.

6. Political Aspects of Court-related Anti-Corruption Reforms

International experience in successful anti-corruption reforms in countries such as Chile, Costa Rica and Singapore indicate that a consensus among the main political forces in a country is first necessary as a fundamental prerequisite before implementing administrative, organizational, and/or procedural reforms of the more “technical type” usually aimed at enhancing transparency and accountability in judicial proceedings. That is, a broad-based consensus among the main political forces within the executive and the legislature domains is needed to guarantee judicial independence as a necessary condition before one can implement other more technical reforms to the court system. This is due to the fact that the most common types of operational corruption mentioned above involve the use of judges and court personnel as means to enhance the power-base of politicians or to bias decisions in favor of other powerful economic interest groups. One has to understand the political resistance to judicial independence as the result of the unwillingness of the executives and legislatures to let go of a court system frequently used as a tool to settle political scores or to consolidate political bases. Therefore, a political consensus at the highest levels involving all parties within, for example, a National Integrity Committee, is the first and most important step to enhance the capacity of the courts to interpret and apply the laws in an unbiased fashion. This important step involves a political consensus aimed at balancing judicial independence and judicial accountability. As many well-developed judicial systems have shown, the balance between judicial accountability and judicial independence is difficult to achieve. Certainly, policymakers must design protective devices to safeguard independence without going too far as to neutralize the incentives provided by a system of democratic accountability to be applied to judges. An effective judicial accountability is also key to the protection of the interests of the economically and politically weakest citizens and groups in a democracy, who are the usual victims of corrupt practices. A framework guiding the reaching of this political balance must first identify the main areas where undue pressures are most likely to hamper the judges’ capacity to adjudicate in an effective and unbiased manner.

It is the lack of judicial independence that mostly affects the weakest members of a society (i.e. the victims of corruption) by the common occurrence of seeing courts being captured by the most powerful private and public groups. The identification of those areas where court-independence is being hampered is therefore necessary. Certainly, it would be naïve to think that constitutional provisions prescribing the separation of powers would be enough to guarantee judicial independence. In fact, constitutional provisions in this respect are not even a necessary condition to attain judicial independence. Countries such as Israel, New Zealand,

Sweden, and the United Kingdom—all countries with recognized high levels of judicial independence—do not possess constitutionally entrenched judicial independence.

The main areas identified by judges and scholars over the years¹⁰² as being key to preserving judicial independence are four. The first one consists in safeguarding the *structural* domain of the court system. In other words, avoiding the creation and modification of judicial institutions by outside forces without the judiciaries consent.

The second area most likely to delineate the nature and scope of judicial independence falls within the personnel-related domain. These personnel-related aspects cover all policies establishing the rules associated with appointments, remuneration, and removals of judges and support personnel. Despite the normal political elements that are necessarily involved in the selection of judges within a democratic system, it is also necessary to establish a “wall of fire” after a judge is appointed. This “wall” protecting court personnel from vested interests is built through a predictable and meritocratic judicial career system for all jurisdictional and administrative personnel in matters involving promotions, transfers, modes of discipline, professional evaluation, training, and continuing education. These are areas within which the independence of judges is usually threatened by external and/or internal forces. Security of tenure is the main element in this domain. In this respect, policies sponsoring security of tenure and limited term appointment do not contradict each other. In fact, the security of tenure required by judicial independence does not clash with mandatory retirement age either. For example, “best practice” judicial reforms mentioned in the previous section, such as Costa Rica, Chile, and Singapore have all found some type of limitation to the tenure of those judges exercising the extraordinary power of judicial review within a country in order to instill in them the incentive to design judicial policies reflecting the interests of all litigants, regardless of their political and economic class. In fact, judges’ limited term appointments are used to balance democratic accountability and judicial independence. It is noteworthy that regardless of the choice of judicial staffing system i.e., appointment by elected politicians, election by the people, and professional career appointment- all of the three main appointment mechanisms are subject to undue pressures coming from outside or from inside the judiciaries.

The third area within which judicial independence is at stake falls under the court administration domain. Clearly, the management of courts and judges is an area where the balance between judicial independence and democratic accountability must be reached given the fact that courts and judges supply a public service funded by public monies. In this respect, there must be some kind of accountability on how well these court services are managed and how well this money is spent. The common rule in best practice countries consists in having the executive and legislatures sharing responsibilities with the judicial branch on administering the courts without controlling administrative aspects related with adjudication. That is why the delineation of judicial annual budgets, case assignments, and case-related court scheduling should be three administrative functions under the strict domain of judicial authorities without any kind of intervention from other branches of government or outside interest.

Finally, the more common direct pressures to the judges’ adjudicational domain usually hamper judges’ independence. Examples include threats to the personal safety of judges, “telephone” justice where executive officials place pressure on judges in order to bias adjudication, or bribery.

¹⁰² Stevens, Robert (1993) *The Independence of the Judiciary: The View from the Lord Chancellor’s Office*. Oxford: Oxford University Press.

7. Technical Aspects of Court-Related Anti-Corruption Reforms

Only after these elements addressing the independence of courts from political forces is introduced, other technical elements dealing with the administrative, organizational, and procedural aspects of court reforms must then also be addressed. For example, recent studies assert that the lack of consistency in the criteria applied to court-rulings in similar case types across and within jurisdictions is key in explaining the high occurrence of corruption (e.g., case fixing) affecting the economically weakest litigants.¹⁰³ It is clear that, throughout countries experiencing high levels of judicial corruption, unjustified substantive discretion in judicial rulings is very much caused by the lack of information systems providing an updated account of doctrines and jurisprudence compatible with enacted or rescinded laws. One of the main complaints voiced by victims of corruption throughout many countries is the high and uncertain cost of going to court due to the lack of predictability in court outcomes. The lack of clear laws and regulations (e.g., contradictions found in laws, procedures and operational manuals) are considered as the primary reason for the abuse of discretion found within the judiciary. Even when rules do exist, sometimes they may not be well specified or they may fail to be enforced. Of course, excessive discretion can also be linked to the political pressures on the judiciaries and patronage related occurrences. Inconsistencies and contradictions involving the legal and constitutional frameworks are also common. National and sub-national legislatures' drafting of new laws in a legal vacuum disregarding past laws are a commonplace occurrence. Additionally, there is usually lack of technical and common sense procedures in the law-making process by legislatures that also affects judicial decision-making.

A common perception of a vicious circle is present in those countries where judges disregard the latest legal enactments and the legislatures disregard past laws and jurisprudence in their law-making process. This generates inconsistencies and uncertainty in the process of adjudication. Moreover, many studies of judiciaries worldwide also show inadequate case recording and lack of dissemination of rulings and jurisprudence coupled with the perceived incapacity to generate consistent legal interpretations.¹⁰⁴ The lack of a consistent interpretation in similar rulings many times fosters the perception of corrupt practices where rulings are also perceived to be bought and sold (i.e. case fixing) and where the weakest groups in a society are systematically discriminated against.¹⁰⁵ In such a context, the judiciary is less able to foster the rule of law and does not generate precedents in checking for arbitrary government administrative decisions. Therefore, the technical enhancement of the supreme

¹⁰³ Buscaglia, Edgardo (2000), *An Analysis of the Causes of Corruption in the Judiciary*, Legal and Judicial Reform Branch. Washington DC: The World Bank.

¹⁰⁴ Buscaglia, Edgardo and William Ratliff (2001), *Law and Economics in Developing Countries*. Palo Alto, CA: Stanford University Press.

¹⁰⁵ For different examples of corruption-driven discrimination against the weakest economic or political groups refer to Buscaglia, Edgardo, 2001. Paper Presented at the World Bank Conference on Justice. St. Petersburg, Russia. July 3-6, 2001 at p. 59; to Buscaglia, Edgardo. 1997. "Comments on Corruption" *Proceedings of the Annual World Bank Conference on Economic Development*, Washington D.C.: The World Bank; Buscaglia, Edgardo and William Ratliff. 1997. "Judicial Reform in Developing Countries: The Neglected Priority" *Annals of the American Academy of Political and Social Sciences*, March.; Buscaglia, Edgardo. 2000. "Judicial Reform in Developing Countries: Its Causes and Economic Consequences" *Essays in Public Policies*. Palo Alto, CA: Stanford University Press; and to Buscaglia, Edgardo. 1997. "Stark Picture of Justice in Latin America" *The Financial Times*, March 13.

courts' capacity to supply effective judicial review is also required. It is a proven fact that abusive substantive discretion is caused by the presence of legal inconsistencies and the lack of information technology providing an easily accessible jurisprudence legal database. The fact that many judges' rulings are based on outdated or flawed laws explains the wide range of allowed judicial rulings causing the perception of substantive undue discretion and consequent case fixing throughout the region.

Within the procedural and administrative domains, corrupt practices cannot be directly measured through "hard" indicators due to the secretive nature of the interactions between court personnel and court users. Yet, it is always possible to assess first-hand perceptions of how frequent specific types of corrupt practices are among all of those individuals interacting within the court system (i.e. judges, court personnel, litigants and their lawyers). The existence of operational and administrative corruption can then be measured through surveys of judges, court employees, litigants' lawyers, and businesses with a record of supplying and demanding court services. A recent jurimetric study applied to Latin America has found that if these three groups of interviewees were asked to describe irregularities and one could find significant correlations among the perceptual patterns of the three groups, then this would represent a significant step in assuring reliable measures of corrupt practices.¹⁰⁶ The survey questions must then be designed in such a way as to measure the perceived relative frequency of having encountered each type of corrupt behavior within the operational and administrative spheres.

Several recent applied studies have shown that court organizational structures coupled with patterns of abuse of discretion related to procedural and administrative matters make judiciaries prone to the uncontrollable spread of systemic corrupt practices at every level.¹⁰⁷ For example, "hard data" objective indicators measuring, through the review of court files, how frequently courts abuse their substantive, procedural, and administrative discretion has been related to the frequencies of corrupt practices. Policies countering corruption within the judiciaries should be able to detect these sources of corrupt incentives. In short, within the technical domain of anti-corruption court reforms, recent studies have determined that the capacity to engage in the types of corrupt practices described above will be fostered:

- ◆ by the lack of transparency and limited predictability in the allocation of internal organizational roles to court employees (e.g. judges concentrating a larger number of administrative tasks within their domain without following written procedural or formal guidelines). In this context, the enhanced capacity of a court official to extract illicit rents will depend on the higher concentration, widespread informality, and unpredictability in the allocation of administrative tasks to court personnel within each court. Therefore, we should also expect here that the enhanced capacity of a court official to extract illicit rents also depends on the judges and court personnel's capacity to engage abuse of substantive/procedural discretion coupled with the presence of added procedural complexity;
- ◆ by the added number and complexity of the administrative and legal procedural steps coupled with unchecked procedural discretion and arcane administrative procedures (e.g. judges and court personnel not complying with procedural times or the disregard of procedural guidelines in dealing with discovery material as established in the code);

¹⁰⁶ Buscaglia, Edgardo (2001), "A Governance-based Analysis of Judicial Corruption: Perceptual vs. Objective indicators" *International Review of Law and Economics*. Elsevier Science

¹⁰⁷ Buscaglia, Edgardo (2001), "A Governance-based Analysis of Judicial Corruption: Perceptual vs. Objective indicators" *International Review of Law and Economics*. Elsevier Science (June) at 45-50

- ◆ by the lack of judicial information about the prevailing jurisprudence, doctrines, laws, and regulations due to defective court information systems and antiquated technology coupled with the lack of information technology aimed at enhancing the transparency of court proceedings (e.g. through computer terminals aimed at providing users with online anonymous corruption reporting channels);

- ◆ and by the lack of mechanisms to resolve disputes on the one hand coupled with the absence of operational social control bodies, as described in the previous section, with the capacity to monitor and compete with the official court services and, therefore, reduce the capacity of courts to engage in corrupt practices.

Finally, it is also clear that the lack of effective judicial review mechanisms within upper-level bodies (i.e. appellate and supreme courts) coupled with the deficient information systems applied to everyday court administrative proceedings also add to the failure of most internal control systems (e.g. auditing) applied to court rulings in particular and to court services in general. Overall, the coexistence of all the pernicious conditions just described in this section create an environment where victims of corruption cannot find redress for their grievances and are subject to more frequent abuses. From a more technical standpoint, the combination of organizational, administrative, and procedural reforms coupled with the incorporation of social control mechanisms has proven to be capable of reducing the degree and scope of corrupt practices within the courts. Yet, as stated above in this section, all these technical reforms require a previous major political consensus fostering judicial independence coupled with democratic accountability as a prerequisite.

8. A National and International Account of Recommended Measures.

In order to address anti-corruption reforms in a holistic and integrated manner, policy measures based on best international practices can be classified as follows:

a. Public Sector (executive) Measures

- ◆ “Open up government “ to the public by (i) inviting civil society to oversee aid and other government programs through social control mechanisms as explained above; (ii) establish and disseminate service standards or “citizen’s charters”, (iii) establish a credible complaints mechanism, all in accordance with the social control experiences introduced in the last two sections of this paper and (iv) monitor public confidence in governments.

- Deliver services closer to customers (increase transparency and thereby increase accountability).

- ◆ implement civil service reform that (i) professionalize the civil service and increase focus on integrity and results, (ii) consumer rights to replace patronage, (iii) meritocracy to replace nepotism.

- ◆ enforce access to information.

- ◆ focus on prevention projects, which educate society to the evils of corruption and instil a moral commitment to integrity in dealings with business and government officials.

- ◆ create a specialised independent anti-corruption commission, which focuses on prevention (research, monitoring education, training and advice) but also has investigative powers.

- ◆ strengthen state institutions by: (i) simplifying procedures (ii) improving internal control by applying best practice auditing and accounting standards, (iii) establishing the right incentives and remuneration.

- ◆ develop and strengthen independent investigative, legislative, judicial and media organisations.

- ◆ provide protective measures for witnesses and whistle-blowers.

- ◆ provide independent audit and investigative bodies supported by sufficient human and financial resources.
- ◆ develop or strengthen administrative remedies such as confiscation of illicit assets.

b. Law Enforcement Measures

- ◆ enforce the independence of the judiciary and of prosecutors in accordance with the principles introduced in the previous two sections.
- ◆ increase the transparency and accountability in the judiciary through the mechanisms stated in the above sections.
- ◆ ensure integrity and accountability of the judicial sector in general by: (i) conditioning the tenure of judges to an initial temporary appointment followed by a permanent appointment subject to annual evaluation conducted by a social control board and a judicial council; (ii) secure the independence and accountability of public prosecutors; (iii) increase transparency through the computerization of police records, prosecutors' files, and of court files; (iv) introduce a transparent system to monitor declared assets of judges.
- ◆ increase internal oversight and supervision through so-called organisational and functional auditing.
- ◆ secure the integrity of the judiciary through: (i) the enforcement of code of conduct, (ii) monitoring of declared assets and (iii) strengthening the internal disciplinary bodies.
- ◆ Improve the collection, analysis and dissemination of court statistics across all key jurisdictions to allow credible monitoring of key impact variables such as access, quality, swiftness and cost of justice.

c. Legislative Measures¹⁰⁸

- ◆ Enhancing the quality of law-making by enforcing the independence and the legal-technical proficiency of the legislature.
- ◆ pass and enforce necessary anti-corruption laws: (i) regulate campaign financing; (ii) regulate and guarantee the independence of supreme audit bodies; (iii) freedom of information, (iv) conflict of interest legislation, (v) freedom of the media and freedom of expression; (vi) whistleblower and witness protection; (v) shift burden of proof regarding confiscation of illicit enrichment (vi) decrease discretionary powers of the executive; (vii) regulate amnesty-related proceedings, (ix) allow the random application of integrity tests or other investigative measures.
- ◆ secure the integrity of the legislative through: (i) the enforcement of a code of conduct, (ii) the monitoring of declared assets and (iii) the strengthening the internal disciplinary bodies.
- ◆ strengthen public accounts committee (PAC) to oversee the supreme audit bodies reporting to parliament.
- ◆ strengthen the anti-corruption watchdog agencies reporting to the legislative by: (i) securing the independence of AC agencies; (ii) building credible complaints mechanism; (iii) enforcing integrity.

d. Private Sector Measures

- ◆ Educate, aid and empower businesses to be able to refrain from participating in illicit behaviour as either the victim or perpetrator of corrupt transactions.

¹⁰⁸ P. Langseth. presentation at the 9th IPAC conference in Milan, November 1999

- ◆ promote ethical standards in business through the development of codes of conduct, education, training and seminars.
- ◆ develop high standards for accounting and auditing and promote transparency in business transactions.
- ◆ develop clear legislation, regulation standards so that the line between legal and illicit activities is a clear one.
- ◆ develop normative solutions to the problem of criminal responsibility of legal persons.
- ◆ (businesses themselves must) develop sufficient internal control mechanisms, train personnel and develop sanctions for transgressions.
- ◆ create a business consultative body aimed at proposing policies to the public sector agencies designed to punish and prevent corruption in the interaction between private and public sectors (e.g. by proposing a code of ethics in financial transactions).

e. Independent (civil society) Measures

- ◆ Increase education, awareness and involvement of the civil society.
- ◆ mobilise civil society organisations (media, NGOs, professional associations, research or university institutes) to research and monitor good governance through social control mechanisms.
- ◆ create and strengthen (NGO) networks to share information on local, regional and national initiatives to fight corruption and to improve public sector governance.
- ◆ strengthen civil society to empower citizens to demand integrity and fairness in government and business transactions.
- ◆ develop good databases and networks for ensuring analysis and monitoring of corruption trends and cases as well as information exchange among different agencies dealing with corruption.
- ◆ build/maintain an independent, professional and free media with a “nation building role by: (i) capacity building; (ii) enforce integrity through introduction and monitoring of code of conduct; (iii) encouraging owners/editors to allow balanced reporting; and (iv) encouraging the media to police itself.

9. International Measures

- ◆ exchange information on regional and national “best practice” initiatives.
- ◆ develop, ratify and incorporate international instruments to encourage and strengthen anti-corruption programmes at the national level.
- ◆ agree to, ratify and implement a comprehensive United nations anti-corruption convention.
- ◆ establish adequate international monitoring systems to determine how national systems comply with ratified protocols and conventions.
- ◆ establish simplified and transparent competitive public procurement procedures and encourage the adoption of international rules in this area.
- ◆ adopt international rules in the area of offshore banking regulations and international investment.
- ◆ increase co-operation in the investigative, prosecutorial and judicial realms.

C. Conclusion

One critical factor that is too often overlooked is the fact that it takes integrity to fight corruption. Perfect anti-corruption strategies are not going to result in curbed corruption if the authorities advocating the strategy are perceived by the public to lack integrity. Both national and international bodies involved in fighting corruption need the confidence and support of the general public to succeed.

Although most people will agree with this position, the fact of the matter is that despite all the surveys done every day, there is still scant research done regarding the trust level between the general public and national and international anti corruption agencies.

A broader understanding of the nature of corruption has led those confronted with it to look for more broadly based strategies against it. Strategies should be holistic, addressing all of the factors which facilitate or contribute to corruption and all of the possible options for measures against it, and integrated, in the sense that, once identified, all of the elements of an anti-corruption strategy must be developed and implemented in mutually consistent and reinforcing ways, avoiding conflicts or inconsistencies. Our case studies applied to the implementation of social control mechanisms applied to the judiciaries, police forces, and to municipal governments have already shown relative success in anti-corruption reform drives.

It is now clear that reactive criminal justice measures must be now supplemented by social and economic measures intended, not only to deter corruption, but also to prevent it by reducing the incentives to become involved in it. Moreover, the recognition that public-sector and private-sector corruption are often simply two aspects of the same problem has led to strategies which involve not only public officials, but major domestic and multinational commercial enterprises, banks and financial institutions, other non-governmental entities and in many strategies, civil societies in general. To address the bribery of public officials, for example, efforts can be directed not only at deterring the paying and receipt of the bribe, but also at reducing the incentives to offer it in the first place. This requires the partnership between victims of corruption and a critical mass of honest public officials in key institutions working together as stakeholders.¹⁰⁹

D. Victims of Corruption as identified through Surveys

Using a comprehensive country assessment (based both on facts and perceptions) a government can begin to identify and examine areas of weakness, devise solutions and monitor progress. In Uganda, for example, it paid off to conduct a large survey across all 46¹¹⁰ districts and compare the types, levels, location, cost and effect of corruption in one district with the national average. Both at district and sub-county integrity workshops action plans were agreed across stakeholder groups. That right away was increasing the risk and uncertainty for district and sub-county level misusing their public power for private gain. Information is power and the challenge is to get the information to the victims of corruption who are suffering. Most anti corruption efforts end up reaching only the people who are paid to fight corruption or possibly the corrupt officials who are in position to abuse their public powers for private gain. To reach the average citizens at the village level is very hard and costly. It was a surprise to all involved parties in Uganda when more than 1,000 people turned up at a sub-county meeting in Mbarara District. The sub county meeting was as a follow up the district integrity workshops organized to disseminate findings of the anti

¹⁰⁹ See Langseth, P., "Added value of partnership in the fight against corruption", presented at the Third Annual Meeting of the Anti-Corruption Network of Transition Economies in Europe, Istanbul, March 2001, available on line at: <http://www.odccp.org/adhoc/crime/gpacpublications/cicp11.pdf>.

¹¹⁰ To cover all the 46 districts in a reliable manner required a sample size of close to 20,000 households

corruption survey and to come up with anti corruption action plan. This proved that the average citizens, who on a daily basis are suffering because of corruption, are eager to get involved in the fight against corruption. Two focus group quotes summarize it all:

The communities should learn to report cases of corruption. But who to? And are we safe? *Mbale, Site 3, Men*

The community is willing to report corrupt service workers but they do not know the offices of the IGG in their area. *Luwero, Site 4, Women*

Following this experience, the Inspector General of Government in Uganda started to address the challenge of empowering the civil society to hold the government accountable through communicating the results from the survey to the average citizens. Short summaries were made in local language and local newspapers, and radio stations were engaged to reach a wider portion of the population who are suffering due to corruption.

Role of the media; According to the Integrity Survey fewer than 30 per cent of the people surveyed knew of IGG after 12 years of operations. Only half the people surveyed thought the IGG was a credible institution in the fight against corruption. Responding to this, IGG has taken upon itself to improve its image when raising awareness about: the negative effects of corruption; levels, location and types of corruption, what can be done to fight corruption; and finally; what their role should be.

In Hong Kong 85.7 per cent (97) of the public trusted ICAC and 66 per cent (97) of the people submitting corruption reports were willing to identify themselves.¹¹¹ The trust level between the anti-corruption agency and the public is critical for the collaboration between the public and the agency. To reach the public, IGG decided to involve the media at the district level. It had already been involved in strengthening the professional skills of the print media, where more than 300 journalists were trained between 1994 and 1999. With fewer than 20 per cent of the population reading newspapers, and with new FM radio stations going on the air after the airwaves were privatized in 1996, more than 90 per cent of the public could be reached by radio. IGG therefore initiated an investigative journalist workshops for district radio journalists. At most of the district and sub-county integrity meetings, radio journalists were there to cover the event. IGG has also started weekly anti-corruption programmes on national and local stations.

Accepting that the collection of information is only the start of a long challenging process, the Programme in Uganda seeks to increase the risk and cost of corrupt officials and to build integrity to prevent corruption. Access to information is only one, although very important, measure to curb corruption.

The National Integrity Survey's 1998 findings¹¹² in Uganda supported this conclusion – 70 per cent of people interviewed that year perceived there to be a great deal of corruption in public services, with 57 per cent believing that corruption had got worse in the past two years.

¹¹¹ LaMagna, Richard C. (1999). *Changing a Culture of Corruption: How Hong Kong's Independent Commission Against Corruption Succeeded in Furthering a Culture of Lawfulness*, Washington, D.C.: US Working Group on Organized Crime, National Strategy Information Center.

¹¹² CIETinternational. (1998). *Uganda National Integrity Survey 1998: Final Report*, Washington, D.C.: EDI, World Bank. The Survey was the first large-scale study of corruption to be undertaken at a

Bribery was the main form of corruption known about by households interviewed in the survey (71 per cent of households), followed by embezzlement (27 per cent) and nepotism/tribalism (19 per cent). The main survey conclusions were as follows¹¹³:

40 % of service users have to pay a bribe to service workers in order to get a service;

the worst cases of bribery reported for public service provisions are in contacts with the police (63 per cent pay a bribe in their contact) and judiciary (50 per cent); men using services have a higher rate of paying bribes (43 per cent) than women using services (31 per cent);

service users in urban communities have a higher rate (1.5 times higher) of paying bribes than users in rural communities; the average (mean) amount of bribes paid ranges from 12,000 /= (for health services) to 106,000/= for judiciary services; (a teacher's monthly salary is around 80.000./=)

46 per cent of service workers thought they would suffer if they reported corruption cases, therefore they were unwilling to report on colleagues. Examples given were victimization by managers and supervisors, isolation by colleagues, being treated as a traitor ;

service users who pay a bribe experience a worse service than those who do not pay; the more contacts a service user has with the provider (e.g. contact with different service workers or several contacts with the same person), the more bribes are paid. The workshop concluded that if there were better, more efficient, streamlined services (e.g. one stop service), the incidence of corruption would be reduced; there are differences in how "corruption" is interpreted e.g. practices considered to be corrupt by communities were considered acceptable by service workers;

17 per cent of service providers thought it was justified to ask for a bribe although 94 per cent think it is corrupt; bribes are less likely to be paid if users receive useful information about the service;

77 per cent of surveyed community representatives said that paying bribes is bad, 18 per cent specified that it is unfair and makes poor people in particular suffer; communities and service workers (not surprisingly) had different views on how corruption cases should be addressed. Communities favored firing and disciplinary measures (38 per cent of respondents), and prosecutions (25 per cent) whereas service workers favored improved pay and conditions (56 per cent of respondents). Although there are clearly issues about pay, experience suggests addressing this alone does not tackle the incidence of corruption.

Victims of Corruption as Identified through Focus Groups ¹¹⁴

Local people were found to be frustrated by the worsening corruption throughout society and saw no effective mechanisms for making officers accountable. The individual quotes made by people from the 348 focus groups gave powerful examples of the extent of corruption and the lack of impact government is perceived to be making in addressing it,¹¹⁵ e.g. *"these days people are like hyenas, they do not beg but just steal. Where has government gone and where should our cries go? "we have magots in these offices, they are all pregnant"*. Corruption was

local level in Uganda. The purpose was to collect information about peoples' experiences and perceptions of corruption in government public service and reaching a sample of 200 communities (18,412 households) across 45 districts of Uganda in addition to 1,595 public service workers. Sixty per cent of the household heads were peasants/farmers.

¹¹³ CIETinternational. (1998). *Uganda National Integrity Survey 1998*:

¹¹⁴ CIETinternational. (1998). *Uganda National Integrity Survey 1998: Final Report*, Washington, D.C.: EDI, World Bank.

¹¹⁵ CIETinternational. (1998). *Uganda National Integrity Survey 1998*:

seen by people as greed for riches as well as a mechanisms for coping with low or non-existent salaries, delayed reimbursement or inadequate services in the case of lower level civil servants and local councilors.

The focus group discussions in Ugandas were recorded by professional supervisors. What follows are selected quotes from the 348 focus groups that empowered more than 3000 victims of corruption to voice their views regarding the types, levels, causes, location, cost and remedies of corruption in their own district and sub-county:

General comments about corruption:

“The whole administration is rotten from top to bottom” *Mbarara, Site 1 Men*

Causes of corruption

“Public servants are corrupt because of greed for money, insecurity of tenure due rampant retrenchment and they need to get rich very quickly”. *Tororo, Site 1, Men*

“We are not paid salaries, when I come across someone who can give me money, I just receive if (extort it)”. *Bundibugyo, Site 1, Men*

“Embezzlement happens, especially in the salary section. They claim the computer has eaten their money” *Moroto, Site 2, Women*

“Nothing much can be done because even the bosses above have known that their juniors are corrupt and have done nothing about it. They are corrupt themselves.” *Hoima, site 2, Men*

Effects of corruption

“People lose confidence in government. They do not even see the reason for elections”.

Kasese, Site 3, Men

“Some people are murdered due to corruption.” *Ssembabule, Site 3, Men*

“Young men are forced to steal in order to pay bribes”. *Mbale, Site 4, Women*

Issues raised with the health sector

“Workers will not give a service without an extra-payment”: “Patient was required to pay money before being issued a piece of paper for writing diagnosis and prescription when official medical forms were available” *Arua, Site 1, Men*

Issues raised about police

“Police do not give a service unless you pay them”:

“When you report a case to police, you are asked for transport money to effect arrest or suspect, even if the suspect is arrested, you are asked for money to take the suspect to court.” *Apac, Site 3, Men*

“Police bosses expect their subordinates to give them money as the subordinates are forced into corruption to satisfy their bosses. In turn, the bosses do not inspect or supervise”. *Mubende, Site 1, Men*

“A robber came to someone’s home and robbed everything in the house. He was later apprehended, but later the person who reported him was arrested instead”. *Kaborale, Site 3, Men*

Issues raised about the courts

“If you do not “cough” (pay a bribe) something, the case will always be turned against you and you end up losing it” *Mbale, Site 4, Men*

“The clerks won’t allow you see the magistrate unless you have given in some money”. *Lira, Site 4, Men*

Issues raised with education and problems with Universal Primary Education (UPE)

“During registration of children for UPE teachers would ask for some ‘little’ money”.

Nakasongola, Site 1. Women

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B. An Economic Analysis of Official Corruption in the Courts

1. Introduction

For a long time, economists have focused their attention on the effects that well-functioning legal and judicial systems have on economic efficiency and development. Adam Smith states in his *Lectures on Jurisprudence* that a factor that "greatly retarded commerce was the imperfection of the law and the uncertainty in its application...." (Smith, p. 528). Judicial corruption hampers economic development by undermining the stability and predictability in the interpretation and enforcement of the law (Buscaglia, 1997 and 1999).

Rose-Ackerman (1997, p. 5) states that "widespread corruption is a symptom that the state is functioning poorly". In fact, the entrenched characteristic of official corrupt practices is rooted in poor governance practices within a state agency coupled by the lack of alternative channels to secure a service through either the private or public sector (Buscaglia, 1997, p. 277). Many scholars have provided path-breaking contributions to the economic analysis of corruption. Studies focusing on describing corrupt practices and on analyzing the impact of corruption on economic development are abundant. Low compensation and weak monitoring systems are traditionally considered to be the main causes of corruption (Becker and Stigler, 1974; and Klitgaard, 1991). In Becker-Stigler (1974) and Klitgaard (1991), official corruption through bribery reduces expected punishment and thus deterrence. In this context, increasing the salaries of public enforcers and/or paying private enforcement agencies for performance will improve the quality of enforcement.

Rose-Ackerman (1978), Macrae (1982), Shleifer and Vishny (1993), Maoro (1995), and Buscaglia et al (2000) provide alternative approaches to the institutional analysis of corruption. In these studies, corruption is considered to be a behavioral phenomenon occurring between the state and the market domains, or in the case of Buscaglia et al (2000), corruption is the symptom of dysfunctional governance within the public sector. In all cases, economic models assume that people and firms respond to incentives by taking into account the probability of apprehension and conviction, and the severity of punishment (Becker, 1993, pp. 234-237). Of course, in all these studies, ethical attitudes matter and the "temptation threshold" is subject to the individual's moral foundation. However, all economic models of corruption stress that, to a lesser or greater degree, people respond to incentives. In all these theories, changes in corrupt activities occur if the marginal returns from crime exceed the marginal returns from legal occupation by more than the expected value of the penalty.

Other work has pointed at how the existence of official corruption distorts the market and implicit price mechanisms by introducing uncertainty in the marketplace (Andvig 1991, p. 59) and the most recent wave of scholarship brings market failures into the analysis of corruption (Acemoglu and Verdier, 2000).

In any case, official corruption is an essential input for the growth of organized criminal activities with the capacity to pose a significant international security threat to social and political stability through the illicit traffic of, among others, narcotics, nuclear, chemical, and biological materials, alien smuggling, and international money laundering operations (Leiken, 1996, p. 56; Marselli and Vannini, 1997; and Langseth, 2000).

The literature mentioned above has been providing a good comprehensive overview of the consequences of entrenched corruption. But an economic theory of corruption must contain more than just an account of the allocative consequences and of the environment surrounding corrupt practices. Therefore, it is necessary to go beyond symptomatic and consequential analyses of official corruption and focus much more on the search for empirically tested causes of official corruption. This piece advances a framework of analysis within which the causes of court-related corruption can be first identified in order to later develop public policy recommendations for an anticorruption program.

An economic analysis of corrupt activities within the judicial sector in developing civil law systems is proposed below. A rigorous public policy approach to the study of corruption must be empirically verifiable if we are to develop reliable public policy prescriptions in the fight against official corruption. At the same time, an economic theory of corruption must recognize that court-related corruption is a significant source of institutional inertia in recent judicial reforms in developing countries. An account of the private costs and benefits of state reforms as perceived by court officials must also be considered (Buscaglia 1997; and Buscaglia and Dakolias, 1999).

2. Empirical Facts about Judicial Corruption in Developing Countries

Judicial corruption is defined here as the use of public authority for the private benefit of court personnel when this use undermines the rules and procedures to be applied in the provision of court services. Judicial corruption in most developing countries takes many forms. We can classify them into two types. Within the following two corruption types we can include many well-known corrupt practices:

Administrative corruption occurs when court administrative employees violate formal or informal administrative procedures for their private benefit. Examples of administrative corruption include cases where court users pay bribes to administrative employees in order to alter the legally-determined treatment of files and discovery material, or cases where court users pay court employees to accelerate or delay a case by illegally altering the order in which the case is to be attended by the judge, or even cases where court employees commit fraud and embezzle public property or private property in court custody. These cases include procedural and administrative irregularities.

The second type of abusive practices involves cases of operational corruption that are usually part of grand corruption schemes where political and/or considerable economic interests are at stake. This second type of corruption usually involves politically-motivated court rulings and/or undue changes of venue where judges stand to gain economically and career-wise as a result of their corrupt act. These cases involve substantive irregularities affecting judicial decision-making.

It is interesting to note here that all countries, where judicial corruption is perceived as a public policy priority, experience a mix of both types of corruption (Langseth and Stolpe, 2001). That is, usually the existence of administrative court corruption fosters the growth of operational corruption and vice versa.

Due to their secretive nature, corrupt practices cannot be directly measured through objective indicators. Yet, it is always possible to assess the perceptions of all of those individuals interacting within the court system (i.e. judges, court personnel, litigators, and court users). The existence of the aforementioned two types of corruption can be measured through surveys of judges, court employees, litigants' lawyers, and businesses with a record of supplying and demanding court services. If these three groups of interviewees were asked to describe irregularities and one could find significant correlations among the perceptual patterns of the three groups, then this would represent a significant step in the measurement of a policy variable. The survey questions must then be designed in such a way as to measure the perceived relative frequency of having encountered each type of corrupt behavior within the operational and administrative spheres.

This study includes an account of relative frequencies of administrative and operational corruption that includes instances of fraud, embezzlement, court-related political clientelism, politically or financially-motivated changes in rulings, politically or financially-motivated changes of venue, speed money, and extortion. The questions in all surveys intend to capture the frequency of occurrence of each of these corrupt practices within a sample of 450 commercial cases in 27 pilot courts. The data analysis below show the results of conducting annual surveys during the period 1991-99 focusing on the occurrence of court-related corruption practices in Argentina, Ecuador, and Venezuela. The courts examined were part of

pilot programs containing well known and common policy prescriptions implemented in the three countries between 1993 and 1995. The annual surveys were first conducted in 1991 just before and after the courts examined in this study were subject to key reforms to be explained below.

In Argentina, 10 judges in 10 pilot courts were surveyed between 1991 and 1999. These courts were later subject to administrative and organizational reforms (to be explained below) in 1995. In addition to these judges, 250 lawyers and 400 firms were also interviewed in order to assess the frequencies of corrupt practices. These firms and their lawyers were all litigating before these same courts during the period 1991-99.

In Ecuador, 7 judges in 7 pilot courts, later subject to administrative and organizational reforms, were surveyed jointly with 100 lawyers and 200 firms all bringing cases before these same courts.

In Venezuela, 10 judges in 10 pilot courts, also later subject to administrative and organizational reforms, were surveyed jointly with 160 lawyers and 300 firms all bringing cases before these same courts.

The samples for each of the three countries are stratified by the size of the litigating firms (small-medium, and large size) conveying a 95 percent confidence level for our estimates. Each interviewee was asked to provide a first hand account of the relative frequency of administrative corruption (e.g. "speed money", fraud, and embezzlement) and operational corruption (that include buying/selling of court rulings, court-related political clientelism, politically-motivated changes in rulings, politically-motivated changes of venue, and extortion). The following tables show the proportions of the total sample of commercial cases coming before the courts (200 in Argentina, 150 in Venezuela, and 100 in Ecuador) where each of the types of corrupt practices specified above occurred according to the responses given by judges, litigant firms, and their lawyers). The numbers in parenthesis show Spearman correlation coefficients. The first coefficient corresponds to the correlation between judges' and lawyers' revealed frequencies of occurrence of corrupt acts while the second coefficient corresponds to the correlation between judges' and firms' revealed frequencies.

TABLE 1

ARGENTINA (%)

(Percentage of the sampled commercial cases where there was first hand knowledge of the following corrupt practices)

	Operational Corruption (0.72; 0.86)	Administrative Corruption (0.93; 0.63)	Abuse Discretion (0.71; 0.56)
Judges	13	23	72
Lawyers	21	37	
Firms	3	26	

ECUADOR (%)

(Percentage of the sampled commercial cases where there was first hand knowledge of the following corrupt practices)

	Operational Corruption (0.79; 0.64)	Administrative Corruption (0.87; 0.71)	Abuse Discretion (0.59; 0.61)
Judges	15	24	82
Lawyers	36	51	
Firms	29	40	

VENEZUELA (%)

(Percentage of the sampled commercial cases where there was first hand knowledge of the following corrupt practices)

	Operational Corruption (0.81; 0.57)	Administrative Corruption (0.92; 0.74)	Abuse Discretion (0.79; 0.58)
Judges	23	40	93
Lawyers	25	61	
Firms	19	32	

We can see from the charts above that the most frequent occurrences of corruption in the three countries appear within the administrative domain. Operational (or substantive) corruption (where politically motivated changes in ruling or/and politically motivated changes of venue are the most common practices) follow in all three countries. We obtain high reliability of these perceptions in the three countries, by identifying a very high, positive, and significant correlations among the perceptions revealed by the three groups of respondents (judges, lawyers, and firms). The Spearman correlations for each country (shown in parenthesis in Table 1), are all significant and positive at a 1 percent level for both types of corruption. This shows that the compatible perceptions among the three groups, with different interests at stake, all point at a common pattern of abuse of public authority in its different versions explained above. That is, the frequencies of corruption perceived by judges are highly correlated with the same frequencies perceived by litigators and litigant firms.

Additionally, the close examination of sampled files in each country also reveal a large proportion of cases where either substantive or procedural abuse of judicial discretion occurred. It's noteworthy that our measures of abuse of judicial discretion represent an objective variable captured by identifying the presence of specific occurrences after a careful examination of the ruling and other case file material. Within the samples of cases described above, 95 percent of the occurrences of abuse of discretion consisted in either judges' violations of procedural guidelines (e.g. procedural times or discovery rules) or judges' rulings founded on repealed legislation or the application of the wrong laws to the case. For example, we find that 72 percent of all case files were subject to abuse of substantive or procedural discretion in Argentina. This same type of abusive judicial practices occurred in 82 and 93 percent of the sampled cases in Ecuador and Venezuela respectively. One can claim that in these kind of institutional environments within which abuse of discretion is the

norm, the abuse of public office for private benefit is more likely and more difficult to detect. In fact, if one examines Table 1 above, it is interesting to note that the subjective frequencies of cases where either administrative or operational corruption is perceived by judges and lawyers are highly correlated with the objective measures of abuse of judicial discretion measured (e.g. in Argentina, 0.71 and 0.56 correlations between frequencies of perceived corruption and abuse of discretion for judges and lawyers respectively)

This data summarized in Table 1 will be later used in Part III to compute the annual percentage changes in the relative frequencies of corrupt acts for each pilot court between 1991 (i.e. before the reforms) and 1999 (i.e. after the introduction of key reforms). This indicator will be used as the dependant variable in a jurimetric model presented below where the effects of key policy variables affecting corrupt practices will be identified and explained.

Official Corruption and its Main Causes: An Empirical Model

Scholars have already recognized the advantages of going beyond the macroeconomic findings found in Maoro (1995) by stating the urgent need to isolate the structural features that create corrupt incentives (Rose-Ackerman, 1997). For example, in a recent paper, Cooter and Garoupa (2000) correctly state that “a necessary element when approaching deterrence and elimination of corruption is the institutional design. The structure of institutions and the decision process are important determinants of the level of corruption.”

Yet, only general descriptions and analyses within which corruption may arise within the court system have been identified in the literature and they are clearly insufficient to develop court-specific anticorruption policy prescriptions. In all past judicial corruption studies, a rigorous analysis of the corruption-enhancing factors related to the procedural, substantive, organizational, and governance aspects within which courts operate are all left unexplored (Buscaglia, 1999 and 1997). The need to develop an empirically-testable model, within which specific types of corrupt behavior in well-defined situations can be explained, is a necessary condition for the application of the economic analysis of corruption to judicial policies in developing countries.

More specifically, organizational structures coupled with procedural and administrative patterns make judiciaries prone to the uncontrollable spread of systemic corrupt practices at every level. For example, courts provide internal organizational incentives given by an unchecked abuse of substantive, procedural, and administrative discretion, that make corrupt practices, as measured above, more likely. An economic model of corruption should be able to detect these sources of corrupt incentives.

Our main hypotheses state that court officials' capacity to engage in the corrupt practices described above will be enhanced by: (i) the lack of transparency and limited predictability in the allocation of internal organizational roles to court employees. In this organizational environment, adjudicational roles and administrative functions are subject to unchecked discretion (e.g. judges concentrating a larger number of administrative tasks within their domain without following written procedural or formal guidelines); (ii) the added number and complexity of the procedural steps coupled with unchecked procedural discretion and arcane administrative procedures (e.g. judges and court personnel not complying with procedural times as established in the code); (iii) the lack of judicial knowledge about the prevailing jurisprudence, doctrines, laws, and regulations due to defective court information systems and antiquated technology coupled with the lack of information technology aimed at enhancing the transparency of court proceedings (e.g. terminals aimed at providing users with online anonymous corruption reporting channels); and (iv) fewer alternative sources of dispute resolution mechanisms reflected in a low price elasticity of court services.

All else equal, the enhanced capacity of a court official to extract illicit rents will depend on the higher concentration, widespread informality, and unpredictability in the allocation of administrative tasks to court personnel within each court. The concentration and allocation of administrative tasks is captured through an indicator that measures the proportion of all

administrative tasks in the procedural life of a case that are randomly performed by administrative personnel without written guidelines and in an unsupervised manner. A high indicator would represent an environment where it's easier for lawyers to pick any court employee in the hope that he would perform an unmonitored task in exchange for an illicit fee with a low probability of being sanctioned.

Buscaglia (1998) has demonstrated the clear relationship between procedural complexity and corruption. A recent study on Ecuador's judiciary (Buscaglia and Merino Dirani, 2000) has also proven the link between the systemic presence of abuse of judicial discretion in court rulings (e.g. rulings founded on laws that have been repealed by Congress) and a general perception of corruption jointly expressed by three groups: lawyers, judges, and litigants. Therefore, we should also expect here that the enhanced capacity of a court official to extract illicit rents will also depend on the higher degree of abuse of substantive/procedural discretion coupled with the presence of added procedural complexity.

And, finally, a greater availability of mechanisms to resolve disputes through mediation or arbitration reduces the monopolistic nature of state-sponsored court services within commercial subject matters. In this scenario, a higher price elasticity of demand for court services, due to the greater availability of alternative mechanisms to resolve disputes, would reduce the capacity of court personnel to extract illicit rents.

In this context, we will next focus on the jurimetric explanation of the perceived frequencies of corrupt acts by giving account of the administrative, procedural, substantive, and alternative dispute resolution variables explained in the previous paragraphs.

3. Empirical Analysis

Starting in 1994, 10 pilot commercial courts in Argentina introduced less complex oral procedures and administrative reforms that included the use of manual-based verifiable administrative procedures among court personnel. In this context, 250 lawyers and 400 firms all bringing cases before these same courts were surveyed three years before and three years after these reforms were implemented. Additionally, an anonymous corruption reporting system was installed online so users could send their written complaints simultaneously to Congress and the Supreme Court through terminals located outside the courthouse. In Ecuador, judges and their personnel in 7 pilot commercial courts, were later subject to the same kind of administrative and procedural reforms, and were also surveyed jointly with 100 lawyers and 200 firms all bringing cases before these same courts. In Venezuela, 10 judges in pilot courts were surveyed jointly with 160 lawyers and 300 firms all bringing cases before the surveyed courts. In both these cases, Ecuador and Venezuela, surveys of judges and attorneys were conducted four years before and three years after the implementation of reforms.

The survey measures the frequency of the types of corruption mentioned above in Table 1 according to the separate perception of judges, attorneys, and litigant firms in the most common types of commercial cases: bankruptcy, debt collection, and breach of business contracts.

It is noteworthy that, within each country and during the period under consideration, the sample of courts did not experience significant changes in backlogs and our analysis controls for per capita budgetary allocations. All these courts were under the same judge during the period under consideration: 1990-99. At the same time, the courts sampled here showed no changes in the number and functional structure of their personnel during the period 1990-98 in Argentina, 1990-99 in Ecuador, and the period 1990-98 in Venezuela.

As part of these reforms, most administrative tasks were taken away from each court and allocated to an Administrative Support Office (ASO) shared by the pilot courts in each country. These ASO took away all budget and service-related money transactions from court personnel. At the same time, legal procedures were streamlined and orally-based; external

control and disciplinary measures and inspections were for the first time introduced through regional judicial councils.

A jurimetric study of corruption within the judiciary can provide a good ground for testing the five hypotheses stated above. The period under consideration has been divided into two sub-periods separated by the enactment of a landmark administrative and procedural pilot reforms of the judiciaries in 1994-95 in Argentina and Venezuela and in 1992-94 in Ecuador. The first sub period running between 1990 and 1994 in Argentina and Venezuela, occurs under an older and more complex procedural civil code and with a complete absence of administrative written guidelines and supervision. This first period in the three countries under consideration is characterized by highly decentralized administrative practices with the handling of all procedures in the hands of each court (and sometimes just in the hands of a law clerk with complete and unchecked administrative and adjudicational discretion). During the first sub period before reforms were implemented, the judge and/or law clerk had extreme discretion over all administrative functions (operational budget, strategic planning, personnel management, supply requests, simple and complex archival tasks, and the handling of court fees) and were not subject to or expected any outside inspections. This initial period is also characterized by the relative lack of alternative dispute resolution mechanisms applied to commercial cases in both countries.

In contrast, during the period 1995-99 we observe that these pilot courts were all subject to new rules and to structural changes brought by a new and a much more simplified oral-based procedural code, coupled with a more centralized management of the court system where a specialized type of "court managers" in charge of personnel and budget-related administrative duties were allowed to work within Administrative Support Offices (ASOs) shared by 5 to 10 courts (the number of courts sharing these services depends on the subject matter and country involved). Additionally, computer-based online corruption reporting systems were first introduced, thus generating distrust between potentially corrupt court personnel and those offering bribes. In this context, whistleblowers are for the first time protected by law and publicly portrayed as "model citizens" before the press.

Therefore, this new period brought an enhanced predictability and transparency before the public in the performance and supervision of administrative functions. Moreover, the internal administration of the courts were for the first time under the joint monitoring of three agencies: the judicial councils, the legislature's judicial subcommittees, and the executive's anticorruption office. These internal administrative tasks included potential irregularities related with the management of archives, delivery of court notifications, and the management of court fees and personnel. In this way, judges and their clerks could focus their attention on their adjudicational duties.

Moreover, during this second period running from 1994 to 1999 we also observe a relative increase in the number of alternative dispute resolution mechanisms available to court users in commercial case types and the unprecedented overlap of legal and geographical jurisdictions in commercial cases. One could claim that this increase in the number and variety of dispute resolution mechanisms would cause an expected increase in the price elasticity of demand for court services experienced by the court users we surveyed that, in turn, would also hamper the courts' capacity to extract illicit fees from the public.

In Argentina, these administrative, procedural, and legal reforms occurred in 1994-95 and were examined through a pilot test of 200 cases (each case represents a statistical observation) in 10 courts. In Ecuador, the organizational, procedural, and legal reforms were implemented during the period 1992-93 in the 7 pilot courts examined here. The impact of these reforms was assessed through 100 commercial cases (each case represents a statistical observation) brought before these 7 pilot courts. In Venezuela, the organizational, procedural, and legal reforms were introduced in 1995 and were examined through a pilot test of 150 cases in 10 courts. In all these pilot courts, surveys were administered to judges, law clerks, litigators, and firms with cases before these courts. The perceptions of frequencies of corrupt practices were

captured in seven annual surveys, during a period of four years before and during a period of three years after the reforms were implemented. The relative frequencies of corrupt practices described in Table 1 above provide the basis of an impact indicator of these reforms that will be used as a dependant variable. Let's test our hypothesis.

The objective now is to assess empirically the relevance of court-related frequencies of perceived corruption and verify the influence of six objective variables related to administrative, technological, procedural, and mediation factors. The 6 explanatory variables chosen here are designed to capture the effects on a dependant variable measured in terms of the compatible subjective probabilities of corrupt practices captured on a survey of lawyers, judges, and litigants.

The first objective variable (COMPUTER) is a discrete factor ranging from 1 to 6 measuring the use of court-related information technology in the pilot courts of all three countries. The computer systems accounted for here can perform the following six functions: (i) jurisprudence/legal data base; (ii) backlog/ court statistics; (iii) case-tracking and monitoring; (iv) word processing used for sentencing; (v) accounting of cash flows monitored by external auditors within the judiciary including the existence of a computer network containing professional and financial information about each court's personnel; and (vi) software and terminals provided to court users who choose to report corrupt practices. This online system would also increase the transparency of court proceedings by providing users with an additional channel to report corruption anonymously. Anonymous reporting would also tend to undermine the implicit cooperation required for any corrupt transaction to take place.

The lack of this type of information systems can usually be linked to the inconsistencies found in the application of jurisprudence and to the lack of judicial transparency of court procedures. These inconsistencies coupled with the lack of internal monitoring and external transparency all provide judges and court personnel with the capacity to abuse their discretion at a low expected cost and, therefore, creates an environment within which corrupt practices are more likely to emerge (Buscaglia, 1996). We would therefore expect an inverse relationship between the number of information software systems and the degree of corruption surveyed within each court.

From a procedural standpoint, ex-parte communication is still de facto permitted and common practice in most Latin American countries where judges usually spend a good part of their day meeting lawyers and parties separately. Buscaglia, Dakolias, and Ratliff (1995, p. 34) estimate that the proportion of the judge's day dedicated to these activities range on average between 20 and 35 percent of their working time. Such ex-parte communication creates incentives for corrupt behavior due to the lack of transparency and accountability within the courts.

Another procedural element contributing to the existence of corruption has to do with the lack of enforceable standards applied to the times to disposition experienced by each type of commercial case (Buscaglia and Dakolias, 1996, p 12). Lack of procedural time standards coupled with court delay allow court personnel to "charge a higher price" for speeding the procedure (Buscaglia and Dakolias 1996, p. 25). Within our study, the second objective variable (NUMPROC) measures the number of procedural and administrative steps followed in each of the 450 cases sampled. The third objective variable included in our jurimetric assessment (PROCTIME) measures the times to disposition for each of the 450 commercial cases sampled from the pilot courts. We would expect a positive association between these two procedural variables and the perceived frequency of corruption found within the courts. That is, we observe that higher and unjustified variations in times to disposition of the same types of commercial cases tend to go hand in hand with higher frequencies of corruption.

Traditionally, in most Latin American and, specifically, in most Argentine, Venezuelan, and Ecuadorian courts, the judge has been responsible for strategic planning, managing personnel, administering resources, budgetary control and planning, and, of course, for adjudicating cases. In this context, the high concentration of tacit and informal administrative and

jurisdictional roles in the hands of very few and unmonitored court officials allow judges and their secretaries to impose their own organizational tacit rules. In this context, corruption can spread in an easier fashion within each court where the judge and law clerk control everything from promotions and vacation time, to budgetary issues and strategic planning. In this context, "whistleblowers" are less likely to emerge.

From an organizational perspective, the uncertainty and informality in the allocation of court-related tasks to employees and the multiple and informal administrative roles adopted by a typical judge create incentives for corrupt behavior. This used to occur during the first sub period in all three countries as a result of the lack of external monitoring coupled with the lack of enforcement of administrative procedural manuals.

In Venezuela and in Ecuador this high concentration and informality in the allocation of administrative roles has been diminished in the sampled pilot courts since 1994 and 1995 respectively (Buscaglia, 1997, p.7). In Argentina, the modification in this area became part of a pilot court reform program since 1995. We must therefore link the high informality and discretionality in the allocation of administrative and adjudicative tasks with the enhanced capacity of judges and law clerks to extract rents and impose an organizational "tolerance" for corrupt practices among their court personnel. In this context, the fourth variable identified here as ORGROLE measures the proportion of all administrative and jurisdictional tasks concentrated in the hands of each court employee that have been allocated through "informal" mechanisms. This includes administrative tasks where there are no formal and/or written guidelines describing performance and functions or where the current allocation of court-related tasks contradict written guidelines. An index measuring organizational informality in the allocation of tasks (ORGROLE) is here developed where the index equals the sum of the squares of the proportions of all "informal" administrative and adjudicational tasks assigned to each employee (each of the squares of the proportions corresponds to one employee).

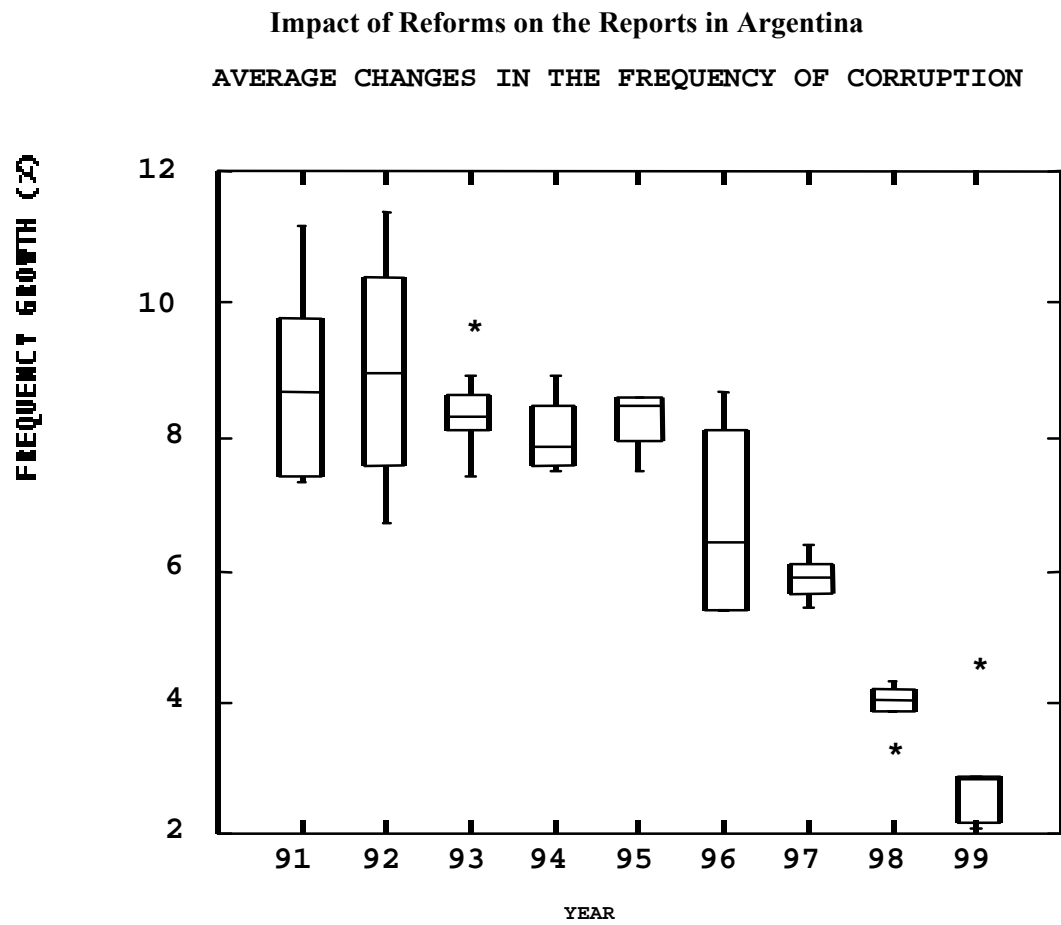
Finally, we need to consider the growth of alternative dispute resolution (ADR) channels providing firms with a range of choices where they can demand mediation, arbitration, conciliation, and legal advice. This clearly increases the firms' elasticity of demand for court services and therefore, reduces the capacity of the government's courts to extract illicit rents (Buscaglia, 1995, p. A13). Along this line, our fifth variable (ADR) measures the number of alternative public and private dispute resolution channels found within the legal jurisdictions and subject matters relevant to the samples of pilot courts and of commercial cases selected.

Finally, a sixth variable measures the weighted average of real incomes of judges, law clerks, and court personnel (REAL INCOME) capturing an additional element commonly associated with public sector corruption (i.e. low compensations).

In the three graphs below, our dependent variable on the vertical axis measures the percentage change in the average frequencies of perceived corruption (i.e. court-specific annual average percentage change in the frequencies of corruption during the period 1991-99). Each year on the horizontal axis corresponds to a box containing all the observations. The observations in each box measure the average percentage changes in the frequencies of corruption for all pilot courts. The middle line in each box shows the median change (each of the asterisks represent an outlier court).

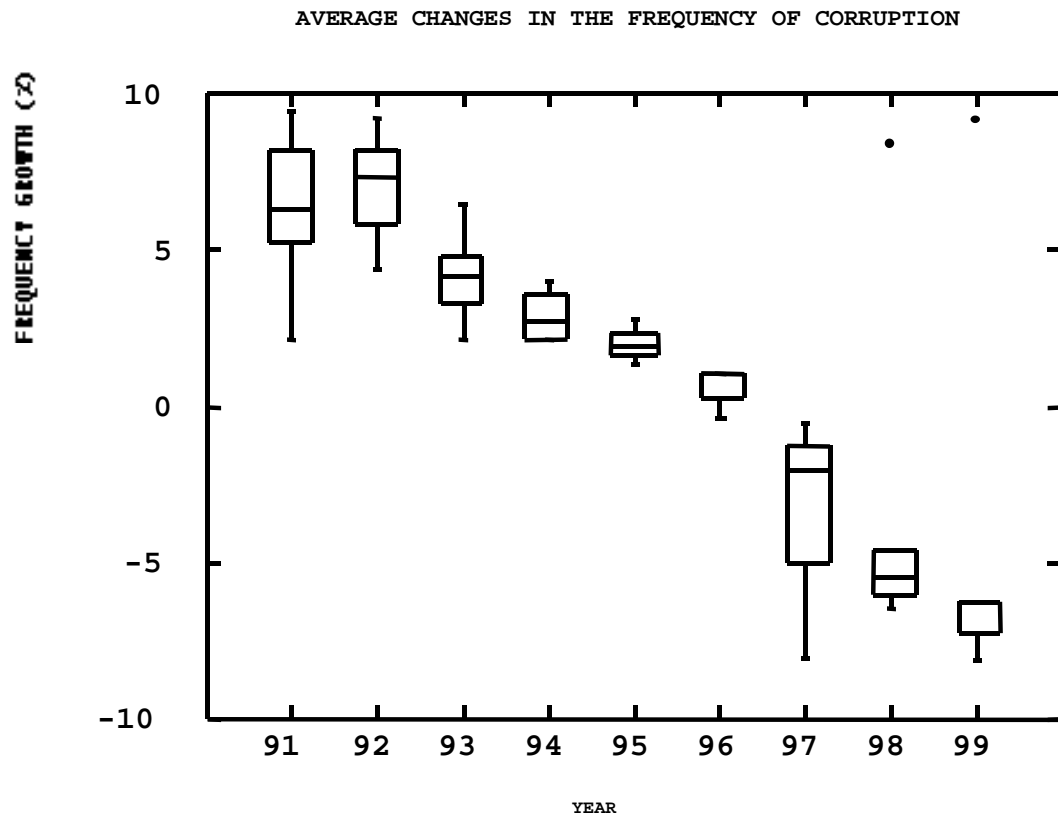
In Argentina, for example, we observe that the median percentage change in the frequency of corruption starts to drop in a significant manner just after the pilot courts are subject to the procedural and organizational reforms mentioned above reaching an unprecedented low level in 1999. As we can see below on Graphs 2 and 3, the same trends occur in Ecuador in Venezuela starting in 1994 right after pilot court reforms are implemented.

Graph 1



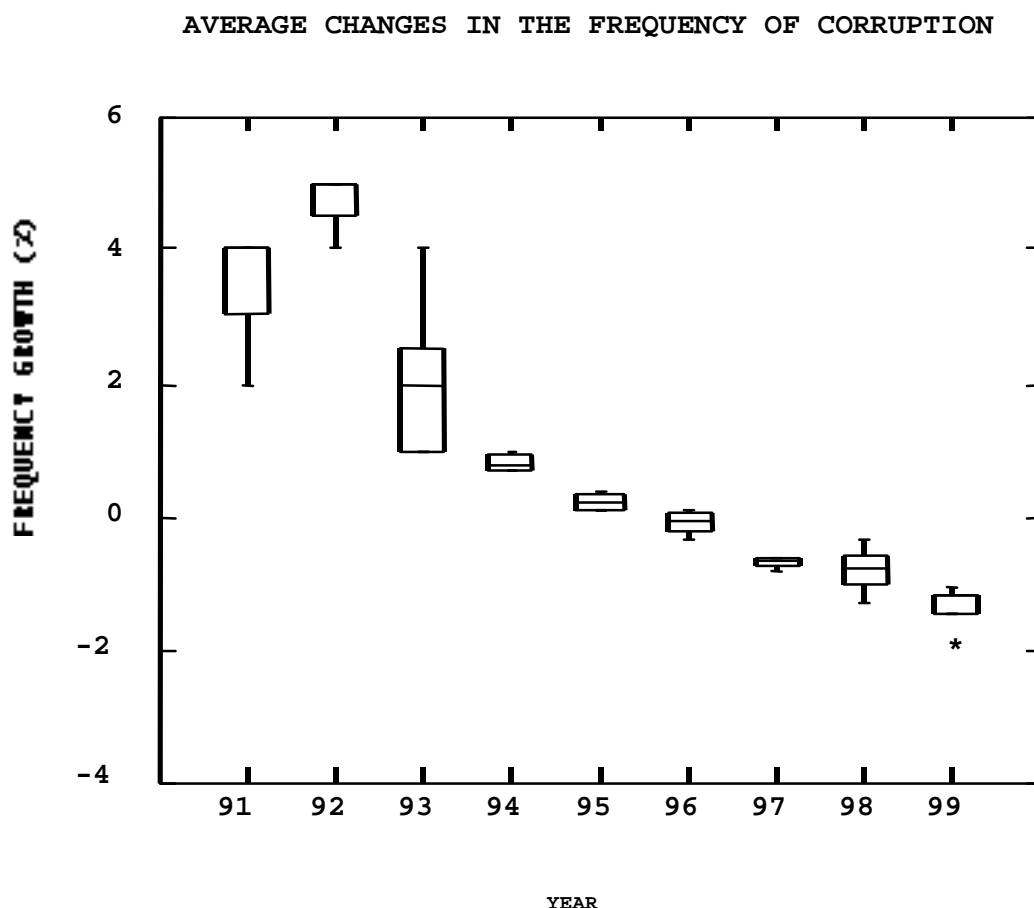
Graph 2

Impact of Reforms on Reports in Venezuela



Graph 3

Impact of Reforms on Reports in Ecuador



The dependent variable has been statistically adjusted for economic growth and for changes in the number of employees and backlogs. Let us note that the aim of this model is not to explain the absolute level of corruption. Our dependent variable aims at capturing the perceived frequencies of corrupt activities within those courts observed by judges, litigators, and litigant firms. In contrast, the dependent variable is designed to identify significant changes in the behavioral patterns of the perceived frequencies of corruption after the 1993-95 legal, administrative, and organizational related reforms introduced in the three Latin American judicial systems.

We can also observe, in the three graphs above, that the behavior of our dependent variable (annual percentage change in the perceived frequencies of corruption per sampled court) goes through a significant decrease beginning in 1994-96, the period when, in accordance with the explanation given above, the aforementioned organizational, procedural, and substantive reforms reduced the capacity of the Argentine, Venezuelan and Ecuadorian court officials to extract illicit rents from users. We can also observe from the length of each of the boxes, that the pilot courts also show a decrease in the spread or standard deviation of the frequencies of perceived corruption. This decrease in the standard deviation signals an improvement in the predictability and expected integrity in the judicial environment in each of the countries.

TABLE 2
DEPENDENT VARIABLE: AVERAGE PERCEIVED FREQUENCY OF CORRUPTION

	VENEZUELA		ECUADOR		ARGENTINA	
VARIABLE	ADJ R-SQUARE= 0.510		ADJ R-SQUARE = 0.493		ADJ R-SQUARE = 0.411	
	OLS	P	OLS	P	OLS	P
ORGRROLE	0.249	0.00	2.961	0.01	0.235	0.07
PROCTIME	0.991	0.00	0.771	0.02	0.671	0.04
NUMPROC	0.295	0.01	4.903	0.00	2.993	0.04
COMPUTER	-2.683	-0.02	-0.651	-0.03	-1.293	-0.11
REPORT	0.917	0.01	1.233	0.00	0.192	0.00
REAL INCOME	-0.810	-0.58	4.006	0.13	-0.81	-0.45
ADR	-2.001	-0.00	-3.910	-0.00	-6.935	-0.08

Table 2 contains the OLS regression results for the year to year changes in the perceived frequencies of corruption. Note that the adjusted R squares are quite reasonable for models of this type (0.51 for Venezuela, 0.493 for Ecuador, and 0.411 for Argentina). The results were tested for multicollinearity and met the basic required assumptions in for these types of models.

The results of the regression analysis in the three countries are consistent and the coefficients are significant and show the expected signs, with the exception of REAL INCOME (average real compensation computed in terms of the basic basket of goods and services).

Our OLS model in Table 2 shows that a an increase in ORGRROLE index, measuring the proportion of all administrative and adjudicational tasks allocated to court personnel (i.e. judge, law clerk, and administrative personnel) in an informal and unpredictable manner, causes increases in the yearly changes in the frequencies of corruption per court in Venezuela, in Ecuador, and, in a less significant manner, in Argentina.

We can also observe that larger variations in procedural times to disposition (PROCTIME), that occur above the code-specified deadline, do also cause significant increases in the perceived frequencies of corruption in Argentina, Ecuador, and Venezuela. This confirms many reports of “speed money-related corruption”. It is common knowledge among litigators that procedural times are used as a strategic tool by court employees to extract larger illicit rents from court users. Our findings tend to confirm these views.

Moreover, we observe from Table 2 that an increase in the number of administrative and procedural steps followed in each of the sampled commercial cases (NUMPROC), also comes with significant increases in the frequencies of perceived corruption in Argentina, Ecuador, and in Venezuela. In all cases, the coefficients show significance at a 1 or 5 percent levels. This adds credence to the claim that unjustified procedural complexity is usually associated to corrupt practices.

On the other hand, as stated above, information technology performing the following six functions also has a significant impact on the perceived frequencies of corruption. Information technology includes (i) the use of a jurisprudence/legal data base online; (ii) accessible backlog/court statistics online; (iii) case-tracking and monitoring system; (iv) word processing used to draft rulings; (v) the online accounting of budget transactions and financial

cash flows monitored by external auditors and the judicial councils including the existence of a computer network containing professional and financial information about each employee; and (vi) the presence of computer terminals to be used by court users who choose to report corrupt practices online. Note that the discrete variable "COMPUTER" ranges from 0 to 6, with 0 meaning the complete absence of information technology and 6 signifying the use of the six systems described above.

A separate variable "REPORT" measures the number of reports channeled through the terminals outside each pilot court. As we can see from Table 2, REPORT is significant at a 1 percent level in all three countries. This confirms that a higher frequency of corruption reports also explain the more frequent perceptions of corrupt practices.

Best practices worldwide show that the presence of this bundle of information technology would tend to enhance the consistency in the application of doctrines, jurisprudence, laws, and regulations and would also increase the transparency of court proceedings while also providing users with an additional channel to report corruption anonymously. Anonymous reporting would also tend to undermine the implicit cooperation required for the performance of any corrupt transaction. In this context, one would expect that increases in the application of these systems to case and court management would also cause a decrease in the frequencies of perceived corrupt practices in Argentina, Venezuela, and Ecuador.

With respect to the introduction and legalization of alternative dispute resolution (ADR), we observe from Table 2 the significance of introducing private sector-provided commercial mediation and arbitration centers within each sampled jurisdiction. We can observe that ADR causes a significant reduction in the perceived frequencies of corrupt practices.

Finally, the lack of statistical significance related to the impact of monetary compensations on judicial corruption is also noted. It is clear from our jurimetric analysis that changes in the real compensations of judges and law clerks do not affect the perceived frequency of corruption during the entire period 1991-99 within which court personnel experienced a 78, 89, and 130 percent increases in real incomes in Venezuela, Ecuador, and Argentina respectively. It is noteworthy that these increases in compensations experienced by the three court systems during the period 1991-99 were granted across the board in each of the court systems and therefore were not associated to merit or performance.

4. Conclusion

Scholars have observed that corrupt practices may sometimes be welfare improving when individuals, who are willing and able to pay a bribe, bypass a rule that is not welfare-enhancing (Macrae, 1982; and Lui, 1985). Nevertheless, one could argue that the widespread effects of corruption on the overall social system of developing countries always have a pernicious effect on efficiency in the long run when a vast majority of the population is not able to offer illicit payoffs to government officials, even when they are willing to do so (Buscaglia 1997). Those members of society who are neither able nor willing to supply illicit incentives will be excluded from the provision of a "public good" (e.g., court services) or unable to bypass a welfare-hampering norm. In these cases, corruption may only allow those who are able and willing to pay the bribe to bypass a welfare hampering rule.

Moreover, a sense of relative inequitable treatment among the vast majority of the population has a long term effect on social interaction where systemic official corruption promotes an allocation of resources perceived to be weakly correlated to generally accepted rights, obligations, and productivity. The average citizen, whose access to a public good is hampered by his inability to pay the illegal fee, then seeks alternative community-based mechanisms to obtain the public service (e.g. alternative dispute resolution mechanisms such as neighborhood councils). These community-based alternative private mechanisms, however, are limited in their supplying and enforcement ability. Hernando de Soto's account of these community-based institutions in Peru attest to the loss in a country's production capabilities

due to the high transaction costs of access to public services (de Soto 1989, pp. 34-67) and to the constraints in scale and scope faced by local institutional arrangements.

We must also take into account not only the societal present and future costs and benefits of eradicating corruption in general, but also the changes in present and future individual benefits (rents) as perceived by public officials whose illicit rents will tend to diminish due to anticorruption public policies. Previous studies argue that institutional inertia in enacting reform stems from the long term nature of the benefits of reform, such as added economic growth or investment (Buscaglia, 1999). These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long term nature of these benefits with the short term nature of the main costs of reform, notably a perceived decrease in rents to the state officials (e.g. explicit payoffs and other informal inducements provided to court officers). This asymmetry between short term costs and long term benefits tends to block policy initiatives to get rid of welfare-hampering laws and regulations.

Within the judicial domain, previous studies of judicial reforms in Latin America argued that the institutional inertia in enacting anticorruption reform stems from the long term nature of the benefits of reform, such as increasing job stability, judicial independence, and professional prestige. These benefits cannot be directly captured in the short term by potential reformers within specific courts. Contrast the long term nature of these benefits with the short term nature of the main costs of reform, notably a perceived decrease in illicit rents to judges and law clerks (e.g. explicit payoffs and other informal inducements provided to court officers). This asymmetry between short term costs and long term benefits has proven to block judicial reforms and explains why court and legal reforms, which eventually would benefit most segments of society, are often resisted and delayed (Buscaglia, Dakolias, and Ratliff 1995). In this context, court reforms promoting uniformity, transparency, and accountability in the process of enforcing laws, would necessarily diminish the court-personnel's capacity to seek extra-contractual rents, in the form of payments from the private sector. Reform sequencing, then, must ensure that short term benefits compensate for loss of illicit rents previously received by court officers responsible for implementing the changes. That is, initial reforms should focus on the public officials' short term benefits. In turn, court reform proposals generating longer term benefits need to be implemented in later stages of the reform process.

This study has shown how the joint effects of organizational, procedural, economic, and legal factors are able to significantly explain the yearly changes in the frequencies of corruption within Argentina's, Venezuela's and Ecuador's first instance pilot commercial courts. For the development of reliable policy recommendations, this study also stresses the need to develop theories of corruption containing objective and well-defined indicators of corrupt activities and an account of factors that are able to capture the institutional characteristics that affect a public officials' willingness and ability to extract illicit rents.

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C. Investigating the Links between Access to Justice and Governance Factors: An Objective Indicators' Approach

1. Introduction: The Main Issue

Democracy functions as a system with formal and informal institutional interrelated mechanisms serving the purpose of translating social preferences into public policies. Enhancing the effectiveness of society's dispute resolution mechanisms is also a way to address social preferences through public policies within the judicial domain.¹¹⁶ Therefore, it is necessary to ensure that the institutions responsible for the interpretation and application of laws are able to attract those parties who can't find any other way to redress their grievances and solve their conflicts.¹¹⁷

In order to avoid cultural, socio-economic, geographic, and political barriers to access the court system, the judiciary must adopt the most effective substantive and procedural mechanisms capable of reducing the transaction costs faced by those seeking to resolve their conflicts. If barriers to the judicial system affect the socially marginalized and poorest segments of the population, expectations of social and political conflict are more common, social interaction is more difficult, and disputes consume additional resources.¹¹⁸

It is clear by now that a centralized "top-down" approach to law making has caused social rejection of the formal legal system among marginalized segments of the populations in developing countries who perceive themselves as "divorced" from the formal framework of public institutions.¹¹⁹ This "divorce" reflects a gap between "law in the books" and "law-in-action" found in most developing countries.¹²⁰ As a result, large segments of the population who lack the information or the means to surmount the significant substantive and procedural barriers seek informal mechanisms to redress their grievances. Informal institutions do provide an escape valve for certain types of conflicts. Yet many other types of disputes involving, for example, fundamental rights and the public interest remain unresolved. This state of affairs damages the legitimacy of the state, hampers economic interaction, and negatively affects the poorest segments of the population.¹²¹

This background paper addresses these concerns by using case study analysis to identify the links between access to justice and poverty, and by then identifying those governance-related factors blocking the access to justice to the poorest segments of the population.¹²² We assess

¹¹⁶ See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press.

¹¹⁷ *Id.* at 56

¹¹⁸ Norms are here understood as coordinating mechanisms for social interaction. Refer to Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29; and to Cooter, Robert (1996) "The Theory of Market Modernization of Law", *International Review of Law and Economics*, Vol. 16, No 2, pp. 141-172.

¹¹⁹ The "Law and Development" movement is ascribed to Seidman (1978), Galanter (1974), and Trubek (1972). These authors generally sponsored a comprehensive and centralized legislative reform covering the modernization of the public and private dimensions of the law through international transplants from "best practice" legal systems.

¹²⁰ See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29

¹²¹ See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29

¹²² This background paper is part of a larger study covering similar links in the rural and urban regions of Argentina, Chile, Colombia, and Ecuador.

the nature of these links through the study of three cases that describes and analyzes the patterns of demand for formal and informal mechanisms to resolve disputes by samples of the rural population in Colombia's Andean Region—where 70 percent of the nation's population lives. Two rural areas within the Department of Boyaca have been selected for this study: Pauna and San Pablo de Borbur. We must note that these two municipal jurisdictions have been experiencing relatively low levels of violence and guerrilla activity compared to the rest of the Andean Region. These two regions will be compared to a third Colombian rural area (Socha) where neither formal nor informal effective mechanisms to resolve disputes are currently functional.

After a descriptive section on the patterns of access to justice, this paper will later focus on two main analytical aspects:

The economic impact of dispute resolution mechanisms on the average rural family's economic net worth. This section has strong implications addressing the links between dispute resolution mechanisms and poverty levels; and

the governance-related roots of the problems affecting formal *vis a vis* informal dispute resolution mechanisms.

2. The Relative Economic Impact of Formal vs. Informal Dispute Resolution on Litigants Network

Most judicial systems found in Latin America and Europe were designed during the 19th century within the general framework of the Napoleonic model of centralized parliamentarist law-making. A top-down and centralized approach to law making was then transplanted to most Latin American countries, including Colombia, and has survived until this day. This "top-down" institutional legal framework has shown scarce capacity to translate the law in the books into "law in action" for dispute resolution purposes.¹²³ In this context, excessive procedural formalisms and administrative complexities block the filing and resolution of relatively simple cases, such as land title disputes or alimony cases brought by the socially weakest segments of the population.¹²⁴ This failure of the public judicial system to satisfy the public's demand for court services is clearly documented in Buscaglia, Dakolias, and Ratliff (1995).¹²⁵

The belief that the judicial sector within the Latin American region is ill prepared to foster private sector development within a market economic system has been documented in several studies. The most basic elements that constitute an effective judicial system are missing. These elements include: (a) predictable judicial discretion applied to rulings; (b) access to the courts by the population in general regardless of their income level; (c) reasonable times to disposition; and (d) adequate remedies.¹²⁶ Increasing time delay, backlogs, and uncertainty associated with expected court outcomes have hampered the access to justice and diminished

¹²³ Refer to Buscaglia, Edgardo et al (2000), *Law and Economic in Developing Countries*. Stanford University Press; Buscaglia Edgardo, Robert Cooter, and William Ratliff (1996) *Law and Economics of Development*, New Jersey: JAI Press-Elsevier Science.

¹²⁴ See Buscaglia, Edgardo (1997), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 13-18;

¹²⁵ Buscaglia, Edgardo, Maria Dakolias, and William Ratliff (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press

¹²⁶ Buscaglia, Edgardo, Ratliff, William, and Dakolias, Maria (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press

the quality of justice throughout most of the Latin American region.¹²⁷ Colombia is no exception to this pernicious pattern of court-related services.¹²⁸

The links between access to justice and poverty have been scarcely explored. Authors such as Spain (1994) and Houseman (1993) describe how the poorest segments of society are at a significant institutional disadvantage in terms of their access to justice.¹²⁹ This background paper, that is part of a much larger five-country study, follows this line of inquiry and introduces a methodology with the capacity to determine the nature of the links between access to justice and poverty by sampling the poorest segments of Colombia's rural population. This same methodology can be applied to urban or rural areas within other countries. The rural population of Colombia accounts for 76.5 percent of those living under the poverty level.¹³⁰ Government statistics show that 67 percent of the land devoted to productive purposes in the Andean rural region, where 71 percent of Colombians reside, has a size equal to 5 hectares or less. Note also that 68 percent of those working these small 5 hectare-plots are considered "poor" or "extremely poor" by government official statistics.¹³¹ Yet, one finds that this rural segment accounts for just 1.6 percent of the total demand to resolve civil disputes through formal court services nationwide.¹³² One also finds that 44 percent of these civil disputes correspond to land title-related issues and 35 percent correspond to family-related cases. Clearly, there's a pattern of demand for court services that can be investigated further.

In order to conduct our investigation, a recent survey of 4,500 rural households was conducted within three municipal jurisdictions (Pauna, San Pablo de Borbur, and Socha) in the Department of Boyaca.¹³³ Each of these jurisdictions is very similar in every socio-economic respect (income levels, patterns of trade and economic activity, age-distribution, gender composition, etc). Moreover, the level of organized violence (kidnappings, assassinations, and drug trafficking) show similar patterns and is clearly below the national average for Colombia.¹³⁴

The survey focuses on the poorest segments of the rural population attached to imperfectly titled land that is used for productive purposes.¹³⁵ The paper later compares the poorest households' net worth (i.e. households within the bottom 20 percent of the regional socioeconomic range) **before and after** their access to formal and informal conflict resolution mechanisms in cases dealing with land title-survey-related disputes and alimony payments.

¹²⁷ Corp[oracion Excelencia en la Justicia (1999), *Reforma Judicial en America Latina: Una Tarea Inconclusa*. Bogota: CEJ (abril)

¹²⁸ *Id* at 178-189

¹²⁹ Refer to Spain, Larry (1994), "Alternative Dispute Resolution for the Poor: Is It an Alternative?" *North Dakota Law Review* Vol. 70, No 269; and Houseman, Alan W. (1993), "ADR, Justice, and the Poor" *National Institute for Dispute Resolution (NIDR)*, Summer-Fall, pp.56-78.

¹³⁰ Departamento Administrativo Nacional de Estadística (DANE), 1991. *Una Tipología de los Municipios Colombianos segun Estructuras y Grados de Desarrollo*.

¹³¹ Departamento Nacional de Estadísticas (DANE), 2000. *Censo de Poblacion con Ajustes a Junio de 2000*. Santa Fe de Bogota, Colombia.

¹³² Consejo Superior de la Judicatura (2000), *Atlas Judicial de Colombia*. pp. 23-34

¹³³ This survey was conducted by local staff through a joint effort of the International Law and Economic Development Center during the period August 2000-January 2001.

¹³⁴ Camilo Echandia Castilla (2000) *El Conflicto Armado y las Manifestaciones de Violencia en las Regiones de Colombia*. Biblioteca para La Paz Tomo I. Presidencia de la Republica. Oficina del Alto Comisionado para La Paz.

¹³⁵ A recent study shows that 79.4 percent of the small plots suffer from some kind of title-related survey defect. Refer to Instituto Geografico Agustin Codazzi – (G.A.C.) 2000 –Subdireccion de Geografia, Division de Estudios Geograficos Basicos.

As mentioned above, these are the most common case types affecting the poorest segments of society in the region covered by our sample. We then seek precise indications of how and why dispute resolution mechanisms affect the average household's net worth as one of the possible determinants of poverty conditions.¹³⁶

In each household, the survey focuses on the female and male members separately, making the size of the sample equal to 7,956 individuals. This represents between 3 and 5 percent of each jurisdiction's total population randomly selected and stratified by education, gender, level of income, and age.¹³⁷ All of the 4,500 rural households are attached to formal tenures of small plots of land of 5 hectares or less devoted to agricultural purposes.

Within our total sample, 3.7 percent of those interviewed showed proof that they have attempted to access formal court-provided civil dispute resolution mechanisms, (compared to 4.9 percent of the same poorest segment of the population in urban areas nationwide) while just 0.2 percent of the sampled households (i.e. 9 out of 4,500 households) responded that they were able to obtain some type of final resolution to their land or family disputes (involving mainly title-survey defects and alimony cases) through the court system. We also found that 91 percent of those demanding court services during the period 1998-99 were within the upper ranges of net worth, while just 9 percent of those court users were in the lowest 10 percent range of measurable net worth within the region.¹³⁸

In contrast to the low demand for court services, 8 percent of those interviewed in 1999 and 7.5 percent of those interviewed in 2000 gave specific detailed instances of using community-based mechanisms (mostly neighborhood councils and complaint panels) and of reaching final resolutions of land-title and/or family civil disputes. This indicates a gap between formal and informal institutional usage through community-based conciliation and neighborhood complaint boards that needs to be addressed. In this context, complaint panels can be considered social control mechanisms needed to stabilize the allocation of property rights.¹³⁹ The Complaint Panel or Board is composed of three "prominent local residents" selected by Neighborhood Councils ("Parroquias Vecinales") and as such, they do enjoy a high level of popular-based legitimacy. Although the Boards' decisions are not legally binding, their decisions do receive tacit approval by municipal authorities. In fact, Survey Bureaus within the municipal government in these three jurisdictions formally refer to the Boards' findings in order to substantiate their own rulings. This clearly indicates the local governments' recognition of the Boards' rulings. Decisions are not appealed and social control mechanisms usually prevail in the enforcement of the Boards' decisions.

Based on the survey explained above, a large number of social indicators measuring access to public institutions was generated. Chart 1 below measures the proportion of the rural population within the three departments that attest to having no access to the most basic provision of public health, education, and justice (i.e. social basic services).¹⁴⁰ We can also observe that, in these three regions, high degrees of public dissatisfaction are well above the national average.

¹³⁶ The problem of measuring poverty is extremely complex due to a series of factors, among them, the difficulty in identifying its triggering factors, specially those outside the socio-economic range. Moreover, poverty is not a homogeneous concept and the social groups' vulnerability factor has to be assessed.

¹³⁷ The samples were designed to allow for a 1.5 percent margin of error and estimates within a 95 percent confidence level.

¹³⁸ Networth is measured here in the most objective manner by calculating, as part of the survey, the approximate value of family assets net of liabilities.

¹³⁹ Cartas # 1, 2, y 3" in "Paz Publica: Programa de Estudios sobre Seguridad, Justicia, y Violencia." Bogota, Universidad de los Andes 1997-99

¹⁴⁰ The access to basic social services in Colombia is considered in Cartas # 1, 2, y 3" in "Paz Publica: Programa de Estudios sobre Seguridad, Justicia, y Violencia." Bogota, Universidad de los Andes 1997-99

CHART 1
PERCENTAGE OF THE HOUSEHOLDS LACKING ACCESS TO PUBLIC INSTITUTIONS

	Social Basic Services	Justice Sector
Pauna	77	88
San Pablo de Borbur	69	1
Socha	81	92
Regions' Average	82	83
National Average	53	62

If now one focuses on those access to justice indicators shown in Chart 1, we see that between 88 and 71 percent of the sample in these three jurisdictions consider that they lack access to formal systems of justice (including here the police, the prosecutor, and the courts). The most important obstacles to court access can be seen in the following Chart 2.

CHART 2
THE MOST IMPORTANT OBSTACLES TO ACCESS THE COURTS

	% Who Consider It a Serious Obstacle	Who Consider It the Main Obstacle
Information on Rights and Obligations	66%	24%
Basic Information on Initial Proceedings	44%	22%
Corrupt Practices	31%	21%
Direct Costs (lawyers court fees)	42%	11%
Delays	39%	15%
Fear of Abuse of Authority	19%	5%
Distance: Geographical Access	9%	2%

The results from Chart 2 show a clear pattern of uncertainty among those households classified as court users in part due to the lack of legal information (66 percent of them perceive an obstacle rooted in the lack of legal information). The traditional economic factors involved in the access to justice seem to also be present in our three case studies; 42% of the court users consider that the costs of representation impede their access to courts while 11 percent of the sampled households consider it the most important obstacle. Moreover, the fear of abuse of authority by the most unprotected segments of the population is still present; 19 percent of the households consider this factor to be an obstacle, though only 5 percent of them see it as the most important obstacle. Finally, corrupt practices are an obstacle in the minds of 31 percent of the court users, while 21 percent consider corruption the most important obstacle to access civil courts.

If one stratifies these numbers even further, it is also possible to find a clear gender gap among those households within the lowest 20 percent of regional net worth as shown in Chart 3 below:

CHART 3
**PERCENTAGE OF SAMPLE LACKING ACCESS TO FORMAL STATE-
PROVIDED CONFLICT RESOLUTION MECHANISMS**

	WOMEN	MEN
Pauna	96	65
San Pablo de Borbur	82	61
Socha	99	85
Regions' Average	90	76
National Average	72	52

The interesting aspect of these observations is that the types of reasons given for the lack of access (i.e. lack of information on initial procedures, high costs, delays, fear of authority, and long distance to the court of jurisdiction) show no significant difference when comparing male and female interviewees. Yet, as we can also see from Chart 3, the gender gap in access to justice shows worrisome characteristics.

3. Informal vs. Formal Dispute Resolution Mechanisms: Their Impact on Households' Network

As seen above, the judicial systems have lagged behind in the process of providing court services to a population that is solving their conflicts through informal mechanisms. This gradual decline in the public formal-adjudicative system capacity to handle disputes may also be accompanied by negative impacts of court services on poor households' net worth. This survey therefore focuses on providing a comparison of the "before and the after" net worth of those households that have demanded conflict resolution mechanisms either through formal or informal channels via disputes through informal or formal mechanisms respectively. We concentrate now on those 526 households in order to determine the approximate change in their net worth as a result of either determining alimony payments or of clarifying title to their plots of land.

We take the original sample composed of the lowest 20 percent of net worth within the regional population of Pauna and San Pablo Borbur. Our measure of net worth requires the survey-based determination of all sources of income, value of all types of fixed and movable property net of all household liabilities. We divide our sample into four subgroups from the largest to the lowest levels of net worth. We then assess the impact of land disputes on the value of land and household income. We also assess the impact of alimony payments on the households' annual income.¹⁴¹ We then compare the *annual percentage changes in net worth* as a result of receiving clear title to land or alimony payments through either the formal or the informal systems.

¹⁴¹ The survey techniques used to capture asset value and income levels are similar to the methodological standards applied by the US Census Bureau. Refer to <http://www.census.gov/www/statistics.html#online>

CHART 4

EFFECTS OF FORMAL vs. INFORMAL MECHANISMS ON PERCENTAGE CHANGES IN NETWORTH

CIVIL COURTS	COMPLAINT BOARD	SOCHA
Lowest 15-20 percent 0.2	3.4	5.2
Lowest 10-15 percent 1.2	1.2	4.1
Lowest 5-10 percent 0.3	-2.9	9.1
Lowest 1-5 percent 0.1	-7.8	10.7

From Chart 4 above, it is then possible to assess the impact of land dispute resolution and alimony payments on a household's property value and income flows respectively. As a result one can compare the "before and the after" the dispute resolution and, therefore, calculate the percentage change in net worth.

At a first glance one can observe that within the sample taken here, the **effects of formal civil court proceedings on households' net worth** is sometimes negative and always below the levels of positive impact that households enjoy from the use of informal mechanisms. As we can see, the bottom net worth segment of the households' sample (i.e. the poorest households within the bottom 5 percent of the net worth range) is the one that benefits the most under the informal dispute resolution system (an average 10.7 percent increase in their net worth) as compared to a -7.8 percent decrease in net worth by following formal civil court proceedings. **As a result, one can conclude from our sample that court proceedings represent a regressive tax on those households within the bottom net worth range.** These poorest households are the least able to bear the delays of the formal system and some are forced to sell disputed portions of land at discounted prices. In addition, the poorest households are the least likely to have access to any meaningful legal assistance. As we've seen above, the Socha rural region, on the other hand, lacks proper (functional) formal or informal mechanisms for its citizens to resolve these types of civil disputes. In this kind of institutional environment, the sample of households from Socha does not experience any significant change in real net worth during the same two-year period.

4. Governance Related Factors Affecting Formal and Informal Systems

Previous studies have shown that complaint boards represent a socially accepted and widely demanded mechanism within institutionally isolated regions where the state has little or no presence.¹⁴² As stated above, the typical "complaint panels or boards" is composed of three "prominent local residents" selected by Neighborhood Councils ("Parroquias Vecinales") and as such, they do enjoy a high level of popular-based legitimacy.

Within the area of conflict resolution, civil courts must then incorporate some of the comparative advantages of the informal mechanisms in order to improve its own social impact on households' well being. These informal mechanisms have already shown the potential to expand the market place of resolution options and allow disputing parties to seek

¹⁴² *Id* at 61.

their own solutions that better reflect regional social norms and practices. For example, the Boards provide a flexible process of negotiation between the parties in dispute. This is the first step taken by the parties in conflict. The parties start listening to each other's viewpoints and identify common interests at stake while a Board member usually proposes a range of possible solutions to their conflict.

If in between 4 to 10 days the parties do not reach an agreement, then the parties can select a third party to determine the facts of the case and reach a final decision. The decision can be binding or nonbinding depending on the parties' agreement made prior to the final decision. A binding decision avoids further proceedings and reduces conflict-related costs, and a nonbinding decision has the advantage of providing a guide for the parties in order to bring them closer to agreement. One could then call this process a "Mediation-Arbitration Combo" where a panel composed of prestigious volunteers selected from neighborhood councils (*parroquias vecinales*) provide informal conflict resolution services to members of the community. In many cases, these informal mechanisms serve as supplements to the formal systems of justice.

Indeed, these types of mechanisms have become increasingly popular in Colombia's rural areas and there are accounts of how the FARC guerrillas have adopted them in order to gain legitimacy among the population.¹⁴³ The survey shows that 61 percent of our sampled households perceive that informal systems offer ways to sidestep the delays and uncertainty associated with the formal judicial system. In some cases, the disadvantages of litigation may provide the most important reason in deciding whether or not to use informal mechanisms.

A review of our survey results confirms the results found in the literature dealing with the use of informal dispute resolution mechanisms.¹⁴⁴ These results point to seven major potential comparative advantages of informal alternative dispute mechanisms in rural areas *vis a vis* the formal public court system.

In short, our survey results show that the main comparative advantages of the informal "complaint board-panel" system consist in:

- reducing the outcome-related uncertainty faced by the poorest segments of the rural population in the three sampled regions (57 percent of our sample of households consider it an advantage);
- increasing the access of marginalized groups to a framework within which solutions to their conflicts emerge as a result of a participatory consensual approach that includes the parties and the complaint board as a "facilitator" (81 percent of our sample of households consider it an advantage);
- less abuse of discretion due to the more predictable application of rules to resolve a conflict (46 percent of our sample of households consider it an advantage);¹⁴⁵
- lowering the users' direct costs of solving disputes (56 percent of our sample of households consider it an advantage);
- providing more transparent procedures and management of the disputes than the courts do (51 percent of our sample of households consider it an advantage);
- providing enhanced options available to the public to resolve disputes, away from the undue influence exercised by the "powerful" on judges' final rulings (14 percent of our sample of households consider it an advantage); and

¹⁴³ Refer to La Semana, "Narcotráfico y Guerrillas: La Prueba Reina" pp. 26-30, April 2-9, 2001.

¹⁴⁴ Edwards, Harry (1986), "Commentary: Alternative Dispute Resolution: Panacea or Anathema?" *Harvard Law Review*, Vol. 99, No 668

¹⁴⁵ Refer to Buscaglia Edgardo, Robert Cooter, and William Ratliff (1996) *Law and Economics of Development*, New Jersey: JAI Press-Elsevier Science.

- providing better practices and better mechanisms oriented to serve the interests of citizens through a “fairer resolution of the case” than civil courts do (79 percent of our sample of households consider it an advantage)

Studies show that populations around the world have always sought to solve their disputes privately within communities and informal groups.¹⁴⁶ The need to introduce generally accepted private mechanisms to solve disputes within socially marginalized communities becomes a particularly urgent matter whenever the formal court system collapses. It is observed that in Socha, the number of cases (per 1000 in population) where communities take matters into their own hands through vigilantism, “mob justice,” and lynching is five and a half times greater than in San Pablo de Borbur or in Pauna where, as shown above, socioeconomic conditions are similar. This confirms the general finding that where formal and informal mechanisms are not functional, human rights violations are increasingly present.¹⁴⁷

One should also recognize the limitations in the range of case types that can be resolved through informal mechanisms. Historically, courts in Colombia and elsewhere in Latin America have used conciliation techniques for family cases, especially alimony and divorce cases, and in labor disputes.¹⁴⁸ But when the substance of a conflict involves case types where the public interest may be at stake (e.g. civil and political liberties), then informal mechanisms will not supply the “public good” involved in generating jurisprudence or doctrines within legally binding decisions.¹⁴⁹

5. Conclusion

This study has introduced a methodology where the links between access to justice, governance-related factors, and the impact on the poor can be identified and assessed. This same methodology can be applied in any other context or country through the use of objective and perceptual survey indicators.

In the scenario provided by this paper, Colombia’s imperfect democracy needs to find innovative ways for individuals to redress their grievances whenever their rights are infringed. This paper has identified the main governance-related advantages of the informal dispute resolution mechanisms used by the poorest segments of society within three rural jurisdictions in Colombia’s Andean Region. As shown above, the advantages of the informal system include (i) the reduction in the outcome-related uncertainty faced by the poorest segments of the rural population in the three sampled regions; (ii) the increase in the access of marginalized groups to a framework within which solutions to their conflicts emerge as a result of a participatory consensual approach that includes the parties and the complaint board as a “facilitator”; (iii) less abuse of discretion due to the more predictable application of rules to resolve a conflict; (iv) lower users’ direct cost of solving disputes; (v) the provision of more transparent procedures and management of disputes than offered by the courts; (vi) the provision of enhanced options available to the public and businesses to resolve disputes away from the undue influence exercised by the “powerful” on judges’ final rulings; and finally (vii) the provision of better practices and mechanisms oriented to serve the interests of citizens through a “fairer resolution of the case” than offered by civil courts. The civil courts’

¹⁴⁶ Refer to Spain (1994) *Ibid*.

¹⁴⁷ Buscaglia, Edgardo (1996), “Justice and the Strengthening of Democracy”, Paper Presented before the USAID sponsored Conference on Justice and Democracy. Quito, Ecuador, August 7-9, 1996.

¹⁴⁸ Spain (1994) and Houseman (1993), *Ibid*.

¹⁴⁹ Jurisprudence or legal doctrines can be considered “public goods” which exhibit the traditional consumption indivisibilities and no excludability properties. Refer to Refer to Buscaglia Edgardo, Robert Cooter, and William Ratliff (1996) *Law and Economics of Development*, New Jersey: JAI Press-Elsevier Science.

seven relative governance failures identified here can now be addressed in future judicial policies.

D. Judicial Corruption in Developing Countries¹⁵⁰

1. The main Causes of Corruption within the Judiciaries in Developing Countries

The field known as law and economics of development focuses its attention on the effects that well-functioning legal and judicial systems have on economic efficiency and development. Adam Smith states in his *Lectures on Jurisprudence* that a factor that "greatly retarded commerce was the imperfection of the law and the uncertainty in its application" (Smith, 528). Entrenched corrupt practices within the public sector (i.e., official systemic corruption) hamper the clear definition and enforcement of laws, and therefore, as Smith (1978) stated, commerce is impeded. A scientific approach to the analysis of corruption is a necessary requirement in the fight against any social ill. Corruption is no exception. Systemic corruption deals with the use of public office for private benefit that is entrenched in such a way that, without it, an organization or institution cannot function as a supplier of a good or service. The probability of detecting corruption decreases as corruption becomes more systemic. Therefore, as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective and other preventive measures, such as organizational changes (e.g., reducing procedural complexities in the provision of public services), salary increases, and other measures, become much more effective. The growth and decline of systemic corruption is also subject to laws of human behavior. We must better define those laws before implementing public policy. For this purpose we must

Formulate a policy claim (e.g., administrations with high concentrations of organizational power in the hands of few public officials with no external auditing systems are prone to corrupt behavior)

Formulate a logical explanation of a policy claim (e.g., why higher concentrations of organizational power and corrupt behavior go hand in hand)

Gather information to support or disprove the claim

Design public policies based on the findings

In this context, in order to design public policies in the fight against corruption, it is necessary to build a data base with quantitative and qualitative information related to all the factors thought to be related to certain types of systemic corrupt behavior (embezzlement, bribery, extortion, fraud, etc.). For example, the World Bank is currently assembling a data base of judicial systems worldwide (Buscaglia and Dakolias 1999) that covers those factors associated to relative successes in the fight for an efficient judiciary.

International experience shows that specific macropolicy actions are associated with the reduction in the perceived corruption in countries ranging from Uganda to Singapore, from Hong Kong to Chile (Kaufmann 1994). These actions include lowering tariffs and other trade barriers; unifying market exchange and interest rates; eliminating enterprise subsidies; minimizing enterprise regulation, licensing requirements, and other barriers to market entry; privatizing while demonopolizing government assets; enhancing transparency in the enforcement of banking, auditing, and accounting standards; and improving tax and budget

¹⁵⁰ This paper reviews the most recent literature related to economic causes of corruption within the public sector in general and particularly within the court systems in developing countries. It shows the need to generate public policies based on sound and scientific principles that can be accepted by civil societies and the public sector at the same time. An earlier version of this summary paper appeared as an Essay in Public Policy, Hoover Institution Press, 1999

administration. Other institutional reforms that hamper corrupt practices include civil service reform, legal and judicial reforms, and the strengthening and expansion of civil and political liberties. Finally, there are the microorganizational reforms, such as improving administrative procedures to avoid discretionary decision making and the duplication of functions, while introducing performance standards for all employees (related to time and production); determining salaries on the basis of performance standards; reducing the degree of organizational power of each individual in an organization; reducing procedural complexity; and making norms, internal rules, and laws well known among officials and users (Buscaglia and Gonzalez Asis 1999).

Sequencing the Design of Anticorruption Policies

The following steps are recommended in the design of anticorruption policies:

Perform a diagnostic analysis within a country identifying, within a priority list, the main institutional areas where systemic corruption arises. This identification must be conducted through surveys of users of government services, businesses, or taxpayers. The survey should be applied to each government institution (e.g., customs, judiciary, tax agencies, and others).

Once a priority list of areas subject to systemic corruption is derived, develop a data base for each of these institutions containing objective and subjective measures of corruption (e.g., reports of corruption, indictments related to fraud, embezzlement, extortion, or bribery in that agency, prices charged by the agency) and other variables that are thought to explain corruption. Gather information on procedural times in the provision of government services; users' perceptions of efficiency, effectiveness, corruption, and access related to that agency; procedural complexity in the provision of services; and so on.

Conduct a statistical analysis clearly identifying the factors causing corruption in a specific government agency. Identify whether any of the economic, institutional, and organizational factors mentioned above are related to corruption.

Once the diagnostic and identification stages are complete, civil society should become involved in implementing and monitoring the anticorruption policies. The action plan should be developed through consensus between civil society and government and contain problems, solutions, deadlines for implementation of solutions, and expected results.

This approach has been applied at the judicial and municipal levels in many countries with significant results (Buscaglia and Dakolias 1999). Those cases used the following steps: First, a survey was conducted of those users applying for specific permits from their local government (county office, in Venezuela). Those users were interviewed just after finishing the application procedure and were asked to rank the efficiency, effectiveness, level of access, quality of information received, and corruption in the administrative procedure used to obtain construction and industrial license permits. Next, numerical and qualitative data were gathered to identify those variables affecting the public's responses to the survey by applying statistical analyses. The results of this diagnostic study were then shared with representatives of civil society and local government at a workshop. In this workshop, representatives of civil society and local government could agree or disagree with the results.

Once the civil society and the government agreed on the nature of the problems, a technical empirical study conducted by the interdisciplinary team focused on how to reduce corruption and increase efficiency in those areas (e.g., issue of permits) covered by the diagnostic study. This technical study, which identified the mechanisms to reduce corruption and increase efficiency/effectiveness, was later discussed, understood, and accepted by members of the civil society and local government. Civil society was able to devise mechanisms for monitoring the implementation of reforms with deadlines included. The results of implementing these reforms must be measured months after the implementation stage has been completed through another survey of users applying for those same types of permits. The actual results were then compared with the expected results, previously defined as goals by civil society groups. Those experiences show that the implementation of any

anticorruption campaign must be based on sound multidisciplinary scientific principles applied by researchers, practitioners, and civil society. Only a multidisciplinary approach specifying methodology, data, a scientific analysis of what works and what does not work, and, finally, a well-specified sequencing of policy steps as mentioned above can establish a solid policy consensus in the fight against systemic corruption.

Scholars have already recognized the advantages of going beyond the analysis of the impacts of corruption on economic growth and investment, and some have stated the urgent need to isolate the structural features that create corrupt incentives (Rose-Ackerman 1997; Langseth and Stolpe, 2001). But only general situations within which corruption may arise have been identified in the literature. These situations are neither overlapping nor exhaustive. A rigorous analysis, however, of the corruption-enhancing factors within the courts has been unexplored in the literature. The need to develop an empirically testable anticorruption policy in the courts is necessary to incorporate the study of corruption into the mainstream of social science.

The empirical frameworks first introduced by Buscaglia (1997a) to Ecuador and Venezuela and by Buscaglia and Dakolias (1999) to Ecuador and Chile explain the yearly changes in the reports of corruption within first-instance courts dealing with commercial cases. That work shows that specific organizational structures and behavioral patterns within the courts in developing countries make them prone to the uncontrollable spread of systemic corrupt practices. For example, their work finds that the typical Latin American court provides internal organizational incentives toward corruption. A legal and economic analysis of corruption should be able to detect why the use of public office for private benefit becomes the norm. In theory, most developing countries possess a criminal code punishing corrupt practices and external auditing systems within the courts for monitoring case and cash flows. Even if they function properly, however, those two mechanisms would not be enough to counter the presence of systemic corruption in the application of the law. Other dimensions need to be addressed.

Specific and identifiable patterns in the administrative organization of the courts, coupled with a tremendous degree of legal discretion and procedural complexities, allow judges and court personnel to extract additional illicit fees for services rendered. Buscaglia (1997a) also finds that those characteristics fostering corrupt practices are compounded by the lack of alternative mechanisms to resolve disputes, thus giving the official court system a virtual monopoly. More specifically, according to Buscaglia (1998) and Buscaglia and Dakolias (1999), corrupt practices are enhanced by (1) internal organizational roles concentrated in the hands of a few decision makers within the court (e.g., judges concentrating a larger number of administrative and jurisdictional roles within their domain); (2) the number and complexity of the procedural steps coupled with a lack of procedural transparency followed within the courts; (3) great uncertainty related to the prevailing doctrines, laws, and regulations (e.g., increasing inconsistencies in the application of jurisprudence by the courts due to, among other factors, the lack of a legal data base and defective information systems within the courts); (4) few alternative sources of dispute resolution; and, finally, (5) the presence of organized crime groups (e.g., drug cartels), that, according to Gambetta (1993), demand corrupt practices from government officials.

These five factors associated with corrupt practices provide a clear guideline for public policy making. Developing countries such as Chile and Uganda that have enacted a simple procedural code while introducing alternative dispute resolutions have witnessed a reduction in the reports of court-related corruption. Moreover, the success stories of Singapore and Costa Rica show that corruption has been reduced by creating specialized administrative offices supporting the courts in matters related to court notifications, budget and personnel management, cash and case flows. These administrative support offices that were shared by many courts have decentralized administrative decision making while reducing the previously high and unmonitored concentration of organizational tasks in the hands of judges (Buscaglia 1997a).

2. Corruption and its long-term Impact on Efficiency and Equity

Some scholars have observed that official corruption generates immediate positive results for the individual citizen or organization who is willing and able to pay the bribe (Rosenn 1984). For example, Rose-Ackerman (1997) accepts that "payoffs to those who manage queues can be efficient since they give officials incentives both to work quickly and favor those who value their time highly." She further states that, in some restricted cases, widely accepted illegal payoffs need to be legalized (Rose-Ackerman 1997). This statement, however, disregards the effects that present entrenched corruption has on people's perception of social equity and on long-term efficiency. The widespread effects of corruption on the overall social system have a pernicious effect on efficiency in the long run. To understand this effect, an economic theory of ethics needs to be applied to the understanding of the long-term effects of corruption on efficiency.

The average individual's perception of how equitable a social system is has a pronounced effect on that individual's incentives to engage in productive activities (Buscaglia 1997a). The literature has delved into many of the negative impacts that corruption has on the efficient allocation of resources. Yet previous work does not pay attention to the effects that corruption has on the individual's perception of how equitable a social system is. First, in all developing countries, a vast majority of the population is not able to offer illicit payoffs to government officials, even when they are willing to do so (Buscaglia 1997a), and, second, legalizing illicit payoffs may have no impact on social behavior in societies where most social interactions are ruled not by modern laws but by multiple layers of customary and religious codes of behavior.

A significant impact of corruption on future efficiency is the effect that official corrupt practices have on the average citizen's perception of social equity. Homans (1974) shows that, in any human group, the relative status given to any member is determined by the "group's perception" of the member's contribution to the relevant social domain. Homans further states that changes in the relative wealth-related status of an individual member without a perceived change in his social contribution will face open hostility by the other members of society (e.g., envy may generate retaliation and destruction of social wealth). Therefore, within Homans's view, in cases of corrupt practices, a "socially unjustified" increase in the wealth-related status of those who offer and accept bribes represents a violation of the average citizen's notion of what constitutes an "equitable hierarchy" of status within society.

Homans's theory of ethics can be applied to the understanding of the effects of official systemic corruption on efficiency over time. Those members of society who are neither able nor willing to supply illicit incentives will be excluded from the provision of any "public good" (e.g., court services). In this case, even though corruption may remove red tape for those who are able and willing to pay the bribe, the provision of public services becomes inequitable in the perception of all of those who are excluded from the system due to their inability or unwillingness to become part of a corrupt transaction. This sense of inequity has a long-term effect on social interaction. Systemic official corruption promotes an inequitable social system where the allocation of resources is perceived to be weakly correlated to generally accepted rights and obligations. Buscaglia (1997a) shows that a "perceived" inequitable allocation of resources hampers the incentives to generate wealth by those who are excluded from the provision of basic public goods. The average citizen, who cannot receive a public service due to his inability to pay the illegal fee, ceases to demand the public good from the official system (Buscaglia 1997a). On many occasions, the higher price imposed by corrupt activities within the public sector forces citizens to seek alternative community-based mechanisms to obtain the public service (e.g., alternative dispute resolution mechanisms such as neighborhood councils). These community-based alternative private mechanisms, however, do not have the capacity to generate precedents in certain legal disputes affecting all society (e.g., human rights violations or constitutional issues) like the state's court system does. Hernando de Soto's account of these community-based institutions

in Peru attests to the loss in a country's production capabilities owing to the high transaction costs of access to public services (de Soto 1989).

One may initially think that, by eliminating bureaucratic red tape, the payment of a bribe can also enhance economic efficiency. This is a fallacy, however, because corruption may benefit the individual who is able and willing to supply the bribe. As described above, however, the social environment is negatively affected by diminishing economic productivity over time because of the general perception that the allocation of resources is determined more by corrupt practices and less by productivity and, therefore, is inherently inequitable. This creates an environment where individuals, in order to obtain public services, may need to start seeking illicit transfers of wealth to the increasing exclusion of productive activities. In this respect, present corruption decreases future productivity, thereby reducing efficiency over time

3. Corruption and Institutional Inertia

When designing anticorruption policies within the legal and judicial domains, we must take into account not only the costs and benefits to society of eradicating corruption in general but also the changes in present and future individual benefits and costs as perceived by public officials whose illicit rents will tend to diminish due to anticorruption public policies. Previous studies argue that institutional inertia in enacting reforms stems from the long-term nature of the benefits of reform in the reformers' mind, such as enhanced job opportunities and professional prestige (Buscaglia, Dakolias, and Ratliff 1995). These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long-term nature of these benefits with the short-term nature of the main costs of reform, notably, a perceived decrease in state officials' illicit income. This asymmetry between short-term costs and long-term benefits tends to block policy initiatives related to public sector reforms. Reform sequencing, then, must ensure that short-term benefits compensate for the loss of rents faced by public officers responsible for implementing the changes. In turn, reform proposals generating longer-term benefits to the members of the court systems need to be implemented in later stages of the reform process (Buscaglia, Ratliff, and Dakolias 1996).

For example, previous studies of judicial reforms in Latin America argue that the institutional inertia in enacting reform stems from the long-term nature of the benefits of reform, such as increasing job stability, judicial independence, and professional prestige. Contrast the long-term nature of those benefits with the short-term nature of the main costs of judicial reform to reformers (e.g., explicit payoffs and other informal inducements provided to court officers). This contrast between short-term costs and long-term benefits has proven to block judicial reforms and explains why court reforms, which eventually would benefit most segments of society, are often resisted and delayed (Buscaglia, Dakolias, and Ratliff 1995). In this context, court reforms promoting uniformity, transparency, and accountability in the process of enforcing laws would necessarily diminish the court personnel's capacity to seek extra income through bribes. Reform sequencing, then, must ensure that short-term benefits to reformers compensate for the loss of illicit rents previously received by court officers responsible for implementing the changes. That is, initial reforms should focus on the public officials' short-term benefits. In turn, court reform proposals generating longer-term benefits need to be implemented in the later stages of the reform process.

Additional forces also enhance the anticorruption initiative. We usually observe that periods of institutional crisis come hand in hand with a general consensus among public officials to reform the public sector. For example, within the judiciary, a public sector crisis begins at the point where backlogs, delays, and payoffs increase the public's cost of accessing the system. When costs become too high, people restrict their demand for court services to the point where the capacity of judges and court personnel to justify their positions and to extract illicit payments from the public will diminish. At that point court officials increasingly embrace reforms in order to keep their jobs in the midst of public outcry (Buscaglia, Dakolias, and Ratliff 1996, 35). At this point, the public agency would likely be willing to conduct deeper

reforms during a crisis as long as reform proposals contain sources of short-term benefits, such as higher salaries, institutional independence, and increased budgets.

It comes as no surprise, then, that those developing countries undertaking judicial reforms have all experienced a deep crisis in their court system, including Costa Rica, Chile, Ecuador, Hungary, and Singapore (Buscaglia and Dakolias 1999). In each of these five countries, additional short-term benefits guaranteed the political support of key magistrates who were willing to discuss judicial reform proposals only after a deep crisis threatened their jobs (Buscaglia and Ratliff 1997). Those benefits included generous early retirement packages, promotions for judges and support staff, new buildings, and expanded budgets.

Nevertheless, to ensure lasting anticorruption reforms, short-term benefits must be channeled through permanent institutional mechanisms capable of sustaining reform. The best institutional scenario is one in which public sector reforms are the by-product of a consensus involving the legislatures, the judiciary, bar associations, and civil society. Keep in mind, however, that legislatures are sometimes opposed to restructuring the courts in particular and other public institutions in general from which many of the members of the legislature also extract illicit rents.

This essay has provided a review of the most recent literature related to the economic causes of entrenched corruption within the public sector in general and particularly within the court systems in developing countries. This study stresses the need to develop scientific explanations of corruption containing objective and well-defined indicators of corrupt activities. Along these lines, this essay proposes that the joint effects of organizational, procedural, legal, and economic variables are able to explain the occurrence of corruption within the courts in developing countries.

Additionally, this essay describes how equity considerations by individuals affect long-term efficiency. Social psychologists could shed more light in future studies linking the impact of corruption on equity and efficiency. Finally, in order to understand and neutralize institutional inertia during anticorruption reforms, all future studies must incorporate the identification of those costs and benefits that are relevant to those who reform public sector institutions and are responsible for implementing new anticorruption policies.

4. The main Causes of Corruption within the Judiciaries in Developing Countries

The field known as law and economics of development focuses its attention on the effects that well-functioning legal and judicial systems have on economic efficiency and development. Adam Smith states in his *Lectures on Jurisprudence* that a factor that "greatly retarded commerce was the imperfection of the law and the uncertainty in its application" (Smith, 528). Entrenched corrupt practices within the public sector (i.e., official systemic corruption) hamper the clear definition and enforcement of laws, and therefore, as Smith (1978) stated, commerce is impeded. A scientific approach to the analysis of corruption is a necessary requirement in the fight against any social ill. Corruption is no exception. Systemic corruption deals with the use of public office for private benefit that is entrenched in such a way that, without it, an organization or institution cannot function as a supplier of a good or service. The probability of detecting corruption decreases as corruption becomes more systemic. Therefore, as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective and other preventive measures, such as organizational changes (e.g., reducing procedural complexities in the provision of public services), salary increases, and other measures, become much more effective. The growth and decline of systemic corruption is also subject to laws of human behavior. We must better define those laws before implementing public policy. For this purpose we must

Formulate a policy claim (e.g., administrations with high concentrations of organizational power in the hands of few public officials with no external auditing systems are prone to corrupt behavior)

Formulate a logical explanation of a policy claim (e.g., why higher concentrations of organizational power and corrupt behavior go hand in hand)

Gather information to support or disprove the claim

Design public policies based on the findings

In this context, in order to design public policies in the fight against corruption, it is necessary to build a data base with quantitative and qualitative information related to all the factors thought to be related to certain types of systemic corrupt behavior (embezzlement, bribery, extortion, fraud, etc.). For example, the World Bank is currently assembling a data base of judicial systems worldwide (Buscaglia and Dakolias 1999) that covers those factors associated to relative successes in the fight for an efficient judiciary.

International experience shows that specific macropolicy actions are associated with the reduction in the perceived corruption in countries ranging from Uganda to Singapore, from Hong Kong to Chile (Kaufmann 1994). These actions include lowering tariffs and other trade barriers; unifying market exchange and interest rates; eliminating enterprise subsidies; minimizing enterprise regulation, licensing requirements, and other barriers to market entry; privatizing while demonopolizing government assets; enhancing transparency in the enforcement of banking, auditing, and accounting standards; and improving tax and budget administration. Other institutional reforms that hamper corrupt practices include civil service reform, legal and judicial reforms, and the strengthening and expansion of civil and political liberties. Finally, there are the microorganizational reforms, such as improving administrative procedures to avoid discretionary decision making and the duplication of functions, while introducing performance standards for all employees (related to time and production); determining salaries on the basis of performance standards; reducing the degree of organizational power of each individual in an organization; reducing procedural complexity; and making norms, internal rules, and laws well known among officials and users (Buscaglia and Gonzalez Asis 1999).

5. Sequencing the Design of Anticorruption Policies

The following steps are recommended in the design of anticorruption policies:

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Once a priority list of areas subject to systemic corruption is derived, develop a data base for each of these institutions containing objective and subjective measures of corruption (e.g., reports of corruption, indictments related to fraud, embezzlement, extortion, or bribery in that agency, prices charged by the agency) and other variables that are thought to explain corruption. Gather information on procedural times in the provision of government services; users' perceptions of efficiency, effectiveness, corruption, and access related to that agency; procedural complexity in the provision of services; and so on.

Conduct a statistical analysis clearly identifying the factors causing corruption in a specific government agency. Identify whether any of the economic, institutional, and organizational factors mentioned above are related to corruption.

Once the diagnostic and identification stages are complete, civil society should become involved in implementing and monitoring the anticorruption policies. The action plan should be developed through consensus between civil society and government and contain problems, solutions, deadlines for implementation of solutions, and expected results.

This approach has been applied at the judicial and municipal levels in many countries with significant results (Buscaglia and Dakolias 1999). Those cases used the following steps: First, a survey was conducted of those users applying for specific permits from their local government (county office, in Venezuela). Those users were interviewed just after finishing the application procedure and were asked to rank the efficiency, effectiveness, level of access, quality of information received, and corruption in the administrative procedure used to obtain construction and industrial license permits. Next, numerical and qualitative data were gathered to identify those variables affecting the public's responses to the survey by applying statistical analyses. The results of this diagnostic study were then shared with representatives of civil society and local government at a workshop. In this workshop, representatives of civil society and local government could agree or disagree with the results.

Once the civil society and the government agreed on the nature of the problems, a technical empirical study conducted by the interdisciplinary team focused on how to reduce corruption and increase efficiency in those areas (e.g., issue of permits) covered by the diagnostic study. This technical study, which identified the mechanisms to reduce corruption and increase efficiency/effectiveness, was later discussed, understood, and accepted by members of the civil society and local government. Civil society was able to devise mechanisms for monitoring the implementation of reforms with deadlines included. The results of implementing these reforms must be measured months after the implementation stage has been completed through another survey of users applying for those same types of permits. The actual results were then compared with the expected results, previously defined as goals by civil society groups. Those experiences show that the implementation of any anticorruption campaign must be based on sound multidisciplinary scientific principles applied by researchers, practitioners, and civil society. Only a multidisciplinary approach specifying methodology, data, a scientific analysis of what works and what does not work, and, finally, a well-specified sequencing of policy steps as mentioned above can establish a solid policy consensus in the fight against systemic corruption.

Scholars have already recognized the advantages of going beyond the analysis of the impacts of corruption on economic growth and investment, and some have stated the urgent need to isolate the structural features that create corrupt incentives (Rose-Ackerman 1997; Langseth and Stolpe, 2001). But only general situations within which corruption may arise have been identified in the literature. These situations are neither overlapping nor exhaustive. A rigorous analysis, however, of the corruption-enhancing factors within the courts has been unexplored in the literature. The need to develop an empirically testable anticorruption policy in the courts is necessary to incorporate the study of corruption into the mainstream of social science.

The empirical frameworks first introduced by Buscaglia (1997a) to Ecuador and Venezuela and by Buscaglia and Dakolias (1999) to Ecuador and Chile explain the yearly changes in the reports of corruption within first-instance courts dealing with commercial cases. That work shows that specific organizational structures and behavioral patterns within the courts in developing countries make them prone to the uncontrollable spread of systemic corrupt practices. For example, their work finds that the typical Latin American court provides internal organizational incentives toward corruption. A legal and economic analysis of corruption should be able to detect why the use of public office for private benefit becomes the norm. In theory, most developing countries possess a criminal code punishing corrupt practices and external auditing systems within the courts for monitoring case and cash flows. Even if they function properly, however, those two mechanisms would not be enough to counter the presence of systemic corruption in the application of the law. Other dimensions need to be addressed.

Specific and identifiable patterns in the administrative organization of the courts, coupled with a tremendous degree of legal discretion and procedural complexities, allow judges and court personnel to extract additional illicit fees for services rendered. Buscaglia (1997a) also finds that those characteristics fostering corrupt practices are compounded by the lack of

alternative mechanisms to resolve disputes, thus giving the official court system a virtual monopoly. More specifically, according to Buscaglia (1998) and Buscaglia and Dakolias (1999), corrupt practices are enhanced by (1) internal organizational roles concentrated in the hands of a few decision makers within the court (e.g., judges concentrating a larger number of administrative and jurisdictional roles within their domain); (2) the number and complexity of the procedural steps coupled with a lack of procedural transparency followed within the courts; (3) great uncertainty related to the prevailing doctrines, laws, and regulations (e.g., increasing inconsistencies in the application of jurisprudence by the courts due to, among other factors, the lack of a legal data base and defective information systems within the courts); (4) few alternative sources of dispute resolution; and, finally, (5) the presence of organized crime groups (e.g., drug cartels), that, according to Gambetta (1993), demand corrupt practices from government officials.

These five factors associated with corrupt practices provide a clear guideline for public policy making. Developing countries such as Chile and Uganda that have enacted a simple procedural code while introducing alternative dispute resolutions have witnessed a reduction in the reports of court-related corruption. Moreover, the success stories of Singapore and Costa Rica show that corruption has been reduced by creating specialized administrative offices supporting the courts in matters related to court notifications, budget and personnel management, cash and case flows. These administrative support offices that were shared by many courts have decentralized administrative decision making while reducing the previously high and unmonitored concentration of organizational tasks in the hands of judges (Buscaglia 1997a).

6. Corruption and its long-term Impact on Efficiency and Equity

Some scholars have observed that official corruption generates immediate positive results for the individual citizen or organization who is willing and able to pay the bribe (Rosenn 1984). For example, Rose-Ackerman (1997) accepts that "payoffs to those who manage queues can be efficient since they give officials incentives both to work quickly and favor those who value their time highly." She further states that, in some restricted cases, widely accepted illegal payoffs need to be legalized (Rose-Ackerman 1997). This statement, however, disregards the effects that present entrenched corruption has on people's perception of social equity and on long-term efficiency. The widespread effects of corruption on the overall social system have a pernicious effect on efficiency in the long run. To understand this effect, an economic theory of ethics needs to be applied to the understanding of the long-term effects of corruption on efficiency.

The average individual's perception of how equitable a social system is has a pronounced effect on that individual's incentives to engage in productive activities (Buscaglia 1997a). The literature has delved into many of the negative impacts that corruption has on the efficient allocation of resources. Yet previous work does not pay attention to the effects that corruption has on the individual's perception of how equitable a social system is. First, in all developing countries, a vast majority of the population is not able to offer illicit payoffs to government officials, even when they are willing to do so (Buscaglia 1997a), and, second, legalizing illicit payoffs may have no impact on social behavior in societies where most social interactions are ruled not by modern laws but by multiple layers of customary and religious codes of behavior.

A significant impact of corruption on future efficiency is the effect that official corrupt practices have on the average citizen's perception of social equity. Homans (1974) shows that, in any human group, the relative status given to any member is determined by the "group's perception" of the member's contribution to the relevant social domain. Homans further states that changes in the relative wealth-related status of an individual member without a perceived change in his social contribution will face open hostility by the other members of society (e.g., envy may generate retaliation and destruction of social wealth). Therefore, within Homans's view, in cases of corrupt practices, a "socially unjustified" increase in the wealth-

related status of those who offer and accept bribes represents a violation of the average citizen's notion of what constitutes an "equitable hierarchy" of status within society.

Homans's theory of ethics can be applied to the understanding of the effects of official systemic corruption on efficiency over time. Those members of society who are neither able nor willing to supply illicit incentives will be excluded from the provision of any "public good" (e.g., court services). In this case, even though corruption may remove red tape for those who are able and willing to pay the bribe, the provision of public services becomes inequitable in the perception of all of those who are excluded from the system due to their inability or unwillingness to become part of a corrupt transaction. This sense of inequity has a long-term effect on social interaction. Systemic official corruption promotes an inequitable social system where the allocation of resources is perceived to be weakly correlated to generally accepted rights and obligations. Buscaglia (1997a) shows that a "perceived" inequitable allocation of resources hampers the incentives to generate wealth by those who are excluded from the provision of basic public goods. The average citizen, who cannot receive a public service due to his inability to pay the illegal fee, ceases to demand the public good from the official system (Buscaglia 1997a). On many occasions, the higher price imposed by corrupt activities within the public sector forces citizens to seek alternative community-based mechanisms to obtain the public service (e.g., alternative dispute resolution mechanisms such as neighborhood councils). These community-based alternative private mechanisms, however, do not have the capacity to generate precedents in certain legal disputes affecting all society (e.g., human rights violations or constitutional issues) like the state's court system does. Hernando de Soto's account of these community-based institutions in Peru attests to the loss in a country's production capabilities owing to the high transaction costs of access to public services (de Soto 1989).

One may initially think that, by eliminating bureaucratic red tape, the payment of a bribe can also enhance economic efficiency. This is a fallacy, however, because corruption may benefit the individual who is able and willing to supply the bribe. As described above, however, the social environment is negatively affected by diminishing economic productivity over time because of the general perception that the allocation of resources is determined more by corrupt practices and less by productivity and, therefore, is inherently inequitable. This creates an environment where individuals, in order to obtain public services, may need to start seeking illicit transfers of wealth to the increasing exclusion of productive activities. In this respect, present corruption decreases future productivity, thereby reducing efficiency over time.

7. Corruption and Institutional Inertia

Previous studies argue that institutional inertia in enacting reforms stems from the long-term nature of the benefits of reform in the reformers' mind, such as enhanced job opportunities and professional prestige (Buscaglia, Dakolias, and Ratliff 1995). These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long-term nature of these benefits with the short-term nature of the main costs of reform, notably, a perceived decrease in state officials' illicit income. This asymmetry between short-term costs and long-term benefits tends to block policy initiatives related to public sector reforms. Reform sequencing, then, must ensure that short-term benefits compensate for the loss of rents faced by public officers responsible for implementing the changes. In turn, reform proposals generating longer-term benefits to the members of the court systems need to be implemented in later stages of the reform process (Buscaglia, Ratliff, and Dakolias 1996).

For example, previous studies of judicial reforms in Latin America argue that the institutional inertia in enacting reform stems from the long-term nature of the benefits of reform, such as increasing job stability, judicial independence, and professional prestige. Contrast the long-term nature of those benefits with the short-term nature of the main costs of judicial reform to reformers (e.g., explicit payoffs and other informal inducements provided to court officers). This contrast between short-term costs and long-term benefits has proven to block judicial

reforms and explains why court reforms, which eventually would benefit most segments of society, are often resisted and delayed (Buscaglia, Dakolias, and Ratliff 1995). In this context, court reforms promoting uniformity, transparency, and accountability in the process of enforcing laws would necessarily diminish the court personnel's capacity to seek extra income through bribes. Reform sequencing, then, must ensure that short-term benefits to reformers compensate for the loss of illicit rents previously received by court officers responsible for implementing the changes. That is, initial reforms should focus on the public officials' short-term benefits. In turn, court reform proposals generating longer-term benefits need to be implemented in the later stages of the reform process.

The main question to be asked in the development of any anticorruption public policy approach is how to generate public policies based on sound and scientific principles that at the same time can be accepted and adopted by civil society and the public sector alike? The answer to this question is a necessary condition to developing a still absent international public policy consensus in the fight against corruption.

E. The Judicial Integrity Promotion Project

An honest criminal justice system, including the courts, is a necessary prerequisite to any comprehensive anti-corruption initiative. Corruption in criminal justice systems will absolutely devastate legal and institutional mechanism designed to curb corruption, no matter how well targeted, efficient and honest. It will serve no purpose to design and implement anti-corruption programs and laws if the police do not seek to enforce the law, or a judge finds it easy and without risk to be bribed. Judicial integrity has therefore become the cornerstone of the Global Programme against Corruption which was launched by of the United Nations Centre for International Crime Prevention in 1999.

As a first step, the Centre convened in a meeting of eight Chief Justices and senior high-level judges from Bangladesh, Nepal, Nigeria, South Africa, Sri Lanka, Tanzania and Uganda during the during the 10th Congress on Crime Prevention and the Treatment of Offenders in April 2000 in Vienna. At its first meeting, the group, which became known under the International Judicial Leadership Group of Judges, considered means of strengthening judicial institutions and procedures as part of strengthening the national integrity systems in the participating countries and beyond. The objectives of the Judicial Integrity Promotion Project are to (a) formulate the concept of judicial integrity and devise the methodology for introducing that concept without compromising the principle of judicial independence; (b) facilitate a “safe” and productive learning environment for the judiciary and (c) raise awareness regarding judicial integrity.

In 2001 the group met again in February in Bangalore. This second meeting was organized with the assistance of the High Court and the Government of Karnataka State, India, and supported by the United Nations High Commissioner for Human Rights (UNHCHR) and the British Department for International Development (DFID). The purposes of the meeting were to: (i) continue the work of the Judicial Group begun in Vienna; (ii) to consider, and agree upon, the elements of a draft Code of Judicial Conduct; (iii) investigate ways of authenticating this Code for use throughout the world to secure judicial accountability and promote judicial integrity; (iv) consider methodologies for diagnosing systemic weaknesses, including corruption, in the judicial system; and (v) agree upon focus countries in which to undertake pilot programmes designed to strengthen judicial integrity.

Based on the outcomes of these two meetings, as well as several appraisal missions to the respective Member States, CICP developed the judicial promotion project embracing activities at the international, national and sub-national levels. In this context, CICP’s plan of action for the near future consists (a) at the international level in continuing to support the International Judicial Leadership Group in the development, implementation and monitoring of measures aimed at strengthening judicial integrity and the identification and sharing of best practices and (b) at the national level, to (i) assist the judiciary in two selected countries (Nigeria and South Africa) and two other countries in partnership with DFID (Uganda and Sri Lanka) in implementing specific measures to develop and, based on the experience gained from the pilot countries, disseminate best practices at annual workshops for Chief Justices. This would include: (i) the development, implementation and monitoring of anti-corruption action plans; (ii) the assessment of the levels, locations, types, causes and effects of corruption in the justice system; (iii) the adoption, the implementation of a Model Code of Conduct developed by the Group; (iv) the reduction of the vulnerability towards malpractice in general and corruption in particular of the institutional, normative and organisational framework within the justice system; and (v) special attention will be given to the involvement of civil society using, for example, judicial complaints boards.

The purpose of strengthening judicial integrity and accountability is to establish the rule of law so that there is coherence, predictability and stability of the legal system without interfering with the independence of the judiciary.

In order to achieve adherence to rule of law, mechanisms must be put in place to strengthen judicial integrity and accountability to prevent and contain corrupt practices. In particular, the following actions might be considered:

A *plan of action*¹⁵¹ should be developed to combat corruption in the judiciary with input from representatives of the judicial association, the bar association, prosecutor's office, ministry of justice, parliament, and court users.

In order to design a realistic, focused, and effective plan of action, comprehensive *assessments of the types, levels, locations and remedies of judicial corruption* is needed. A mechanism must be established to assemble and record such data in an appropriate format, and to make it widely available for research, analysis and response.

More transparent procedures should be instituted to combat actual or perceived corruption in *judicial appointments* (including nepotism or politicisation) and to investigate candidates for appointment concerning allegations or suspicion of past involvement in corruption.

A transparent, publicly known and possibly random procedure should be adopted for the *assignment* of cases to particular judicial officers to combat actual or perceived litigant control over the decision-maker. Appropriate internal procedures should be adopted within court systems to ensure regular change of assignments of judges to different districts. These should take into consideration factors including gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to not only avoid appearances of partiality but to actually prevent corrupt relationship from forming where a judge spends all of his or her time in one district.

In order to ensure proper and ethical behaviour, a *judicial code of conduct* must be adopted and compliance must be monitored. Judges must be instructed on the provisions established by the code and the public must be informed of its existence and content. Newly appointed judicial officers must formally subscribe to the judicial code of conduct and agree to sanctions, including resignation from office, if it is proved that they have violated the requirements of the code. Representatives of the judicial association, bar association, prosecutors office, ministry of justice, parliament and civil society should be involved in setting standards for the integrity of the judiciary. They should also help to identify best practices and monitor the status of complaints against errant judicial officers and court staff.

All judicial officers should be rigorously required to publicly *declare their assets* and the assets of their parents, spouse, children and other close family members. Such publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official.

Since widespread *delays* cause both opportunities for corrupt practices and the perception of corruption, timely delivery of work-product must be ensured. Practical standards for timely delivery must be developed and made publicly known.¹⁵²

In the area of court management, practical measures should be adopted, such as official recording and transparency of court proceedings. This could either be done traditionally or through the *computerisation of court files*, in order to avoid that court files are not (or do not appear to be) kept properly or are "lost" and require "fees" for their retrieval or substitution. In this respect, modern technology should be utilised by the judiciary to improve efficiency and to redress corruption.

¹⁵¹ Petter Langseth and Oliver Stolpe, "Strengthening Judicial Integrity Against Corruption", *CIJL Yearbook*, 2000.

¹⁵² Edgardo Buscaglia and Thomas Ulen (1997) "An Economic Analysis of the Efficiency of the Judicial Sector in Latin America" *International Review of Law and Economics* (Vol 18); and Edgardo Buscaglia and Maria Dakolias (1995) "The Judicial Delays in Latin America: The Cases of Argentina and Ecuador" Technical Paper Series # 353. The World Bank.

Sentencing guidelines should be adopted, or some other means for identifying clearly criminal sentences and other judgements that are so exceptional that they give rise to reasonable suspicions of partiality.

Alternative dispute resolution systems should be developed and made available to ensure the existence of alternative means to avoid actual or suspected corruption in the judicial branch of government. This common tool has the ancillary benefit of reducing the court's workload by diverting case load where the litigants agree to resolution outside of court.

Opportunities for proper *peer pressure* to be brought to bear on judicial officers should be enhanced in order to help maintain high standards of probity within the judiciary.

An independent, credible and responsive *complaints mechanism* should be established to receive, investigate and determine the validity of allegations regarding corruption involving judicial officers and court staff. Such an institution should include both sitting and past judges, as well as members of the public. It should possibly have a wider mandate and, where appropriate, be part of a body that has general responsibility for judicial appointments, education, reform and disciplinary powers.

Upon sufficient proof of involvement by a member of the legal profession - be it a judicial officer, court staff member or both - in corruption related to activities carried out as a member of the legal profession, appropriate means should be used to prosecute and, if proved guilty, *disbar* the member concerned. In addition, the common practice known as *ex parte* communication, whereby lawyers litigating a case meet the judge adjudicating the same case separately, must be abolished. These 'private' meetings are one place where corrupt acts are born and bred.

Procedures that are put in place to investigate allegations of judicial corruption should be designed taking into consideration the unique work of judicial officers, court staff, and the legal profession. Appropriate provisions for due process in the case of a judicial officer under investigation should be established. This is especially important because judicial officers are vulnerable to false and malicious allegations of corruption by disappointed litigants and others.

It should be acknowledged that judges, like other citizens, are subject to criminal laws. They have *no immunity from obedience to the general law* and it can easily be argued that they should be held to a higher standard of obedience.

An *inspectorate* or equivalent independent guardian should be established to regularly visit all judicial districts in order to inspect records and report on procedures that may endanger judicial integrity. The inspectorate should publicly report founded complaints of corruption, real and perceived, in the judiciary.

The role and functions of *Bar Associations* and *Law Societies* in combating corruption in the judiciary should be acknowledged and fortified. Such bodies should be obliged to report reasonably suspected instances of corruption to the appropriate authorities. They should also be obliged to explain to clients and to the public principles and procedures for handling complaints against judicial officers. Such bodies should also have a duty to institute effective means to discipline members of the legal profession who are proved to have engaged in corruption of the judicial branch including disbarment.

To help ensure transparency of court proceedings and judicial decisions, systems of *direct access* should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting adjudication.

Workshops and *seminars* for the judiciary should be conducted to consider ethical issues, to combat corruption among the judiciary and to heighten vigilance by the judiciary against all forms of corruption. If it does not already exist, a judge's journal should be instituted and should contain practical information on areas that can enhance the integrity of the judiciary.

Judicial officers should be regularly updated on binding decisions concerning the *law of judicial bias* (actual and apparent) and be reminded of their obligation to disqualify themselves from a case for actual or perceived partiality. In order to achieve accountability, both *civil society and the judiciary* should recognise that the judiciary operates within the civil society it serves. Every available means for educating the civil society should be adopted in order to reinforce the integrity of the judiciary and to ensure that society has a stake in whether such integrity is maintained. In order to help ensure monitoring of judicial performance, the public must be educated as to its important function in democratic society. The adoption of initiatives such as a *National Law Day* or *Law Week* should be considered.

The role of the *independent media* as a vigilant and informed guardian against corruptibility in the judiciary should be recognised, enhanced and strengthened by the support of the judiciary itself. Courts should be given the means to appoint, and should appoint, *media liaison officers* to explain to the public the importance of integrity in the judicial institution, the procedures available for complaint and investigation of corruption and the outcome of any such investigations. These officers should strive to eliminate any misunderstanding of the judiciaries' role and function (as might occur, for example, in a case involving an *ex parte* proceeding) in society.

The abuse of substantive and procedural discretion must be identified and monitored periodically. Techniques already exist to identify and objectively measure, through hard data indicators, the proportion of rulings where judges abuse their substantive discretion by, for example, lack of legal foundation in a ruling or simple judicial error.

Moreover, judges must be subject to predictable procedural standards as indicated in the corresponding codes. It is common to find evidentiary material thrown out without justification (i.e. abuse of procedural discretion) or the use of procedural times as a strategic tool to extract rents from court users. Procedural times must be subject to quality control standards. The same "quality control" used by private sector firms must also be applied to court proceedings. In this case, procedural times must be subject to minimum and maximum limits beyond which, when patterns of procedural violations arise, a court must then be scrutinised by judicial council inspectors and external civil society auditors appointed as social control mechanism.

Furthermore, balance between judicial accountability and judicial independence must be reached over time. Judicial integrity will depend upon this balance. For this purpose, independence and accountability must be objectively assessed and evaluated periodically. For example, judicial independence must be assessed based on objective measures of career-based indicators and budget-related factors coupled with the analysis of political pressure applied to judicial rulings and procedural matters.

Some other policy actions would include:

- ◆ the systematic use of psychometric methods as part of merit-based hirings, promotions, and terminations; and the use of biometrics for case management purposes;
- ◆ the design and use of a data base needed to gather information on group and individual behavioral patterns related to irregular practices within the system;
- ◆ the design and implementation of effectiveness flow and stock indicators of the judicial "system" in handling criminal cases coming through the police force (judicial police in some cases), prosecutors' office; court system; and finally the prison system. This indicator allows for the identification of irregular case management patterns.

To ensure the effectiveness of the measures described above, a series of preconditions must be put into place.

- ◆ The low salaries paid to judicial officers and court staff in many countries must be improved. Without fair *remuneration* it will be difficult to eradicate the traditional system of paying "tips" to court staff to file documents.

- ◆ Care should be taken to avoid giving individual judicial officers excessive *case loads*, and to maintain their professional interest and satisfaction within the judiciary.

There are several reasons why technical assistance provided to the criminal justice system should initially focus on the judiciary. These include:

- ◆ The overall aim of establishing the rule of law can only be accomplished if measures similar to those mentioned above are also applied to the other branches of the criminal justice system, in particular to prosecutors, lawyers, court staff, police and prison staff. If issues of corruption within these criminal justice system groups are not also addressed, rule of law will not prevail. Strengthening the integrity and capacity of the judicial system should be one of the main objectives of governments and donors who provide assistance to the criminal justice system. First, because of its independence, the judicial system has only to challenge corruption within its own ranks. The judiciary can refuse political interference, a phenomenon with which police and prosecution in some countries have to deal with on a daily basis, much more easily.
- ◆ The judiciary is likely to be the smallest criminal justice system institution. Technical assistance programs are therefore more likely to have an impact. In particular, integrity and capacity building training can easily target a considerable part of the judges.

The judiciary stands at the end of the criminal justice process. Even if the police and prosecutor's office are not particularly dedicated, their efforts will more likely lead to conviction where the judiciary is competent and vigilant. In particular, when the judge is equipped with secondary investigative powers (as is the case in most civil law countries) and can order investigations, the opportunity exists to strengthen weak cases where the prosecutor or police are unable or reluctant to uncover evidence necessary for a conviction (if the police, prosecution or an independent anti-corruption agency with a mandate to investigate and prosecute are effective, but the judiciary is not, cases will be brought to trial, expectations will be raised but then destroyed when the courts do not convict because they lack integrity or capacity to do so. Such a scenario easily leads to frustration within the police and prosecution, as well as among the general public and ultimately confirms the opinion that corruption pays).

When designing anticorruption policies within the legal and judicial domains, we must take into account not only the costs and benefits to society of eradicating corruption in general but also the changes in present and future individual benefits and costs as perceived by public officials whose illicit rents will tend to diminish due to anticorruption public policies. Previous studies argue that institutional inertia in enacting reforms stems from the long-term nature of the benefits of reform in the reformers' mind, such as enhanced job opportunities and professional prestige.¹⁵³ These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long-term nature of these benefits with the short-term nature of the main costs of reform, notably, a perceived decrease in state officials' illicit income. This asymmetry between short-term costs and long-term benefits tends to block policy initiatives related to public sector reforms. Reform sequencing, then, must ensure that short-term benefits compensate for the loss of rents faced by public officers responsible for implementing the changes. In turn, reform proposals generating longer-term benefits to the members of the court systems need to be implemented in later stages of the reform process

For example, previous studies of judicial reforms in Latin America argue that the institutional inertia in enacting reform stems from the long-term nature of the benefits of reform, such as increasing job stability, judicial independence, and professional prestige. Contrast the long-term nature of those benefits with the short-term nature of the main costs of judicial reform to reformers (e.g., explicit payoffs and other informal inducements provided to court officers).

¹⁵³ Edgardo Buscaglia, Maria Dakolias, and William Ratliff. 1995. *Judicial Reform in Latin America: A Framework for National Development*. Essays in Public Policy. Stanford: Hoover Institution.

This contrast between short-term costs and long-term benefits has proven to block judicial reforms and explains why court reforms, which eventually would benefit most segments of society, are often resisted and delayed. In this context, court reforms promoting uniformity, transparency, and accountability in the process of enforcing laws would necessarily diminish the court personnel's capacity to seek extra income through bribes. Reform sequencing, then, must ensure that short-term benefits to reformers compensate for the loss of illicit rents previously received by court officers responsible for implementing the changes. That is, initial reforms should focus on the public officials' short-term benefits. In turn, court reform proposals generating longer-term benefits need to be implemented in the later stages of the reform process.

Additional forces also enhance the anti-corruption initiative. We usually observe that periods of institutional crisis come hand in hand with a general consensus among public officials to reform the public sector. For example, within the judiciary, a public sector crisis begins at the point where backlogs, delays, and payoffs increase the public's cost of accessing the system. When costs become too high, people restrict their demand for court services to the point where the capacity of judges and court personnel to justify their positions and to extract illicit payments from the public will diminish. At that point court officials increasingly embrace reforms in order to keep their jobs in the midst of public outcry.¹⁵⁴ At this point, the public agency would likely be willing to conduct deeper reforms during a crisis as long as reform proposals contain sources of short-term benefits, such as higher salaries, institutional independence, and increased budgets.

It comes as no surprise, then, that those developing countries moving on the "fast track" of judicial reform have all experienced a deep crisis in their court system, including Costa Rica, Chile, and Singapore.¹⁵⁵ In each of these three countries, additional short-term benefits guaranteed the political support of key magistrates who were willing to discuss judicial reform proposals only after a deep crisis threatened their jobs.¹⁵⁶ Those benefits included generous early retirement packages, promotions for judges and support staff, new buildings, and expanded budgets.

Nevertheless, to ensure lasting anticorruption reforms, short-term benefits must be channeled through permanent institutional mechanisms capable of sustaining reform. The best institutional scenario is one in which public sector reforms are the by-product of a consensus involving the legislatures, the judiciary, bar associations, and civil society. Keep in mind, however, that legislatures are sometimes opposed to restructuring the courts in particular and other public institutions in general from which many of the members of the legislature also extract illicit rents.

The main question to be asked in the development of any anticorruption public policy approach is how to generate public policies based on sound and scientific principles that at the same time can be accepted and adopted by civil society and the public sector alike? The answer to this question is a necessary condition to developing a still absent international public policy consensus in the fight against corruption.

¹⁵⁴ *Id.*

¹⁵⁵ Edgardo Buscaglia, and Maria Dakolias. 1999. "Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account." Legal and Judicial Reform Unit Technical Paper. The World Bank.

¹⁵⁶ Edgardo Buscaglia, 1997. "An Economic Analysis of Corrupt Practices within the Judiciary in Latin America." In Claus Ott and Georg Von Waggenheim, eds., *Essays in Law and Economics V*. Amsterdam: Kluwer Press.

F. Integrity and Capacity of the Criminal Justice System – A Development Issue

1. Corruption in the Criminal Justice System: An obstacle to development, human security and the rule of law

After years of research and discussion a broad consensus among scientists, practitioners and politicians has been formed based on the perceived fact that corruption is one of the main obstacles to peace, stability, sustainable development, democracy, and human rights around the globe¹⁵⁷. Wide spread corruption may endanger the stability and security of societies, undermine the values of democracy and morality, and jeopardize social, economic and political development¹⁵⁸.

As a matter of fact the more recent debate among economists and development experts has concluded that good governance in its cross cutting nature is a key determinant to “quality growth”. While education, health and the protection of environment are crucial elements, good governance is the only component that, if improved, will positively affect all the others.

This link between widespread and systemic corruption on the one hand, and hampered development on the other, seems to be particularly obvious in Africa, where we find today, according to the UN Human Development Report, the highest concentration of least developed countries in the world. At the same time various indicators reveal comparatively high levels of perceived as well as experienced corruption within the region.

Both the Transparency International Corruption Perception Index as well as the World Bank “Governance Matters” Survey suggest that African countries tend to suffer from widespread corruption. Even though both instruments have been increasingly criticized during these last years for just supporting their findings mainly on perceptual biases and for their non-representative samples, limited in some cases to the business communities in each country, they currently remain the most well known sources directly providing information on the levels of corruption.

Also, the data available seems to confirm the strong correlation between political stability, human security, the rule of law and the control of corruption. Most African countries that are perceived to suffer from high levels of corruption, also tend to show low levels of perceived rule of law, political stability and human security.

Just as reduced corruption is key to enhanced social, political and economic development, there is an area within the broad field of building integrity to prevent and control corruption that needs particular attention because of its crucial nature to all other elements. This is the criminal justice system in its safeguarding function. Only a functioning criminal justice system is capable of ensuring the rule of law, and human security in general¹⁵⁹.

Corruption is the natural enemy of the rule of law. Corruption within criminal justice institutions mandated to enforce and safeguard the rule of law is particularly alarming and destructive to society. It is a sad fact that in many countries, it is precisely these institutions that are perceived as corrupt. Instances and allegations of corrupt police who sell “protection” to organized crime, judges who are “in the pocket” of powerful criminals and court systems that are so archaic that citizens are denied access to justice are rampant. The immediate effect of such perceptions is public cynicism towards government, lack of respect for the law and

¹⁵⁷ The Lima Declaration against Corruption, 8th International Conference against Corruption, September 1997, Lima Peru.

¹⁵⁸ General Assembly, Resolution 51/59 and Resolution 53/ 176, Action against Corruption.

¹⁵⁹ Report of the Expert Group Meeting on Corruption, held in Buenos Aires from 17-21 March 1997

societal polarization. This environment inevitably leads to unwillingness on the part of the public to participate in bona fide anti-corruption initiatives.

There is increasing evidence that in several African countries corrupt practices are widespread in the various authorities forming the justice system. Particularly affected seems to be the police and to a large extent also the judiciary. In a service delivery survey conducted in 1998 in Mauritius, according to 50% of the respondents corruption was prevalent in the police force and a 25% of the respondents stated that “favoritism” is a common attitude among magistrates ¹⁶⁰. A similar survey conducted in Tanzania in 1996 revealed that 32% of those interviewees who were in contact with the judiciary had actually paid “extra”. Additionally, 35% of service users admitted making payments to the staff within the Police force ¹⁶¹. In Mali the service delivery survey carried out in 1995, revealed that corruption was considered most serious in the justice system. 57% of the respondents agreed that corrupt practices were widely spread both in the police and the courts ¹⁶². In Uganda, the National Integrity Survey conducted in 1998 yielded even more worrisome results. The two services where bribery is most common are the police (two third of respondents reported to have paid bribes) and the judiciary (half of respondents had paid bribes). The widespread perception of a high level of corruption in public services was accepted as reliable by the staff interviewed within the Police and the Judiciary. ¹⁶³

¹⁶⁰ Corruption Perception Survey, Mauritius, 1998, Analysis Research Consultants and World Bank

¹⁶¹ Service Delivery Survey on Corruption in the Police, Judiciary, Revenue and Lands Services in Tanzania conducted in cooperation between the Tanzanian Presidential Commission on Corruption, the World Bank and CIET International

¹⁶² Mali, Service Delivery Survey, 1995, Word Bank

¹⁶³ Uganda National Integrity Survey 1998, Final Report, CIET International and World Bank

G. Key Measures and who is responsible

1. Access to justice

1. Code of conduct reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately. (Measure 1.1; 1.6; 16.4; 17.3)

Action: Chief Justice of the Federation

2. Consider how the Judicial Code of Conduct can be made more widely available to the public. (Measure 2.2)

Action: Individual Chief Judges

3. Consider how best Chief Judges can become involved in enhancing the public's understandings of basic rights and freedoms, particularly through the media. (Measure 2.1)

Action: Individual Chief Judges

4. Court fees to be reviewed to ensure that they are both appropriate and affordable. (Measure 4.1) Action: All Chief Judges

5. Review the adequacy of waiting rooms etc. for witnesses etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose. (Measure 5.1)

Action: All Chief Judges

6. Review the number of itinerant Judges with the capacity to adjudicate cases away from the court centre. (Measure 5.1)

Action: All Chief Judges; Chief Justice of the Federation

7. Review arrangements in their courts to ensure that they offer basic information to the public on bail-related matters. (Measure 7.1)

Action: All Chief Judges

8. Press for empowerment of the court to impose suspended sentences and updated fine levels. (Measure 8.1)

Action: Chief Justice of the Federation

2. Quality of Justice

9. Ensure high levels of cooperation between the various agencies responsible for court matters (police; prosecutors; prisons) (Measure 9.2)

Action: All Chief Judges

10. Criminal Justice and other court user committees to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations. (Measure 9.13; 16.5)

Action: All Chief Judges

11. Old outstanding cases to be given priority and regular decongestion exercises undertaken. (Measure 9.2; 9.10)

Action: All Chief Judges

12. Adjournment requests to be dealt with as more serious matters and granted less frequently. (Measure 9.3)

Action: All Chief Judges; Chief Justice of the Federation

13. Review of procedural rules to be undertaken to eliminate provisions with potential for abuse. (Measure 9.7)

Action: All Chief Judges and Chief Justice of the Federation

14. Courts at all levels to commence sittings on time. (Measure 9.4)

Action: All Chief Judges.

15. Increased consultations between judiciary and the bar to eliminate delay and increase efficiency. (Measure 9.6)

Action: All Chief Judges

16. Review and if necessary increase the number of Judges practising case management. (Measure 9.8)

Action: All Chief Judges

17. Ensure regular prison visits undertaken together with human rights NGOs and other stakeholders. (Measure 9.12; 16.5)

Action: All Chief Judges

18. Clarify jurisdiction of lower courts to grant bail (e.g. in capital cases). (Measure 10.2)

Action: All Chief Judges and Chief Justice of the Federation

19. Review and ensure the adequacy of the number of court inspections. (Measure 10.4)

Action: All Chief Judges

20. Review and ensure the adequacy of the number of files called up under powers of review. (Measure 10.5)

Action: All Chief Judges

21. Examine ways in which the availability of accurate criminal records can be made available at the time of sentencing. (Measure 11.1)

Action: All Chief Judges and Chief Justice of the Federation

22. Develop Sentencing Guidelines (based on the United States' model). Measure 11.2)

Action: Chief Justice of the Federation

23. Monitor cases where ex parte injunctions are granted, where judgments are delivered in chambers, and where proceedings are conducted improperly in the absence of the parties to check against abuse. (Measure 13.1; 13.3; 13.4)

Action: All Chief Judges and Chief Justice of the Federation

24. Ensure that vacation Judges only hear urgent cases by reviewing the lists and files. (Measure 13.2)

Action: All Chief Judges and Chief Justice of the Federation

3. Public Confidence in the Courts

25. Introduce random inspections of courts by the ICPC. (Measure 16.3)

Action: Independent Commission for the Prevention of Corruption,

26. Conduct periodic independent surveys to assess level of confidence among lawyers, judges, litigants, court administrators, police, general public, prisoners and court users (Measure 16.1)

Action: Nigerian Institute of Advanced Legal Studies supervised by the UN's CICP

27. Strengthen the policies and initiatives to improve the contact between the judiciary and the executive (Measure 16.4)

Action: All Chief Judges and Chief Justice of the Federation

28. Increase the involvement of civil society in Court User Committees (Measure 16.5)

Action: All Chief Judges

4. Improving our efficiency and effectiveness in responding to public complaints about the judicial process

29. Systematic registration of complaints at the federal, state and court level (*Measure 16.3*)

Action: All Chief Judges and Chief Justice of the Federation

30. Increase public awareness regarding public complaints mechanisms (*Measure 16.1*)

Action: All Chief Judges and Chief Justice of the Federation

31. Strengthening the efficiency and effectiveness of the public complaints system. (*Measure 16.3*)

Action: All Chief Judges and Chief Justice of the Federation

Appreciation

Our proceedings had the benefit of contributions from the Hon. Attorney General and Minister of Justice Chief Bola Ige and the Hon. Justice M.M.A. Akanbi Chairman of the Independent Corrupt Practices and Other Related Offences Commission

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H. Guide for Planning a Federal Integrity Meeting for Chief Judges in Nigeria

Scope

The scope the Federal Integrity Meeting for Chief Judges is to help a country build consensus for a Federal Integrity Strategy and a Judicial Integrity Action Plan and at the same time raise awareness about the negative impact of corruption in the country and the progress that has been made in curbing it.

The objective of the meeting is to create partnerships, foster participation and direct group energy toward productive ends, e.g. agreement on an anti-corruption strategy and an action plan.

Description

The Federal Integrity Meeting for Chief Judges brings together a broad based group of *stakeholders* to form a consensual understanding of the types, levels, locations, causes, and remedies for corruption and to promote the strengthening of institutional mechanisms for enhancing judicial integrity, fostering greater access to the courts and improvements in the quality of justice delivered by the Nigerian State.

This type of workshop can either be organized at the Federal or the sub-national level or for single integrity pillars. All these different workshops have in common that both, their process component and their content component are important for the effectiveness of any anti-corruption effort. The *process component* maximizes learning and communication by the exchange of experience, while the *content component* produces new knowledge and stimulates the debate that leads to new policies.

The Meeting Design: Any workshop should be designed with specific objectives in mind. Every aspect of the design should increase the chances these objectives will be met. The most important objectives are to:

ensure that the workshop content is focused, and the scope of the content clearly defined; and at the same time ensure that the workshop process enhances the sharing of information and transfer of knowledge. This aspect is often overlooked, but is at least as important as the first.

Other important process objectives are to create a learning environment; enable networking and cooperation between stakeholders and participants (synergy); generate proactive energy amongst participants and motivate them to take initiative for follow-up actions; and enhance a results and solution orientation instead of only focusing on problems.

The design of a workshop requires advance planning. A good framework should be in place well before the start of the workshop. All workshop office bearers (such as the Workshop Management Group, facilitators, chairpersons, panelists, speakers and support staff) should be well briefed about their respective roles and tasks in advance. Participants, also, should be informed in advance about what is expected of them, and should attend the workshop well prepared to meet both the content and process objectives.

The planning and design process, however, is not fixed in concrete at the start of the workshop. The process is evaluated throughout the workshop, and changes are made as necessary. At the end of each day the Workshop Management Team should meet to review the process and make adjustments as necessary to the next day's schedule.

Process component

Most meetings to date have been two day events preceded by a series of preparatory activities to build organisational capacity, foster broad based consultation, collect credible survey data, select key workshop personnel, as well as, publicise workshop objectives.

So far the broad pattern has been as follows.

First Plenary Session. The first plenary is an awareness raising event designed to launch the workshop and to build pressure for participants to deliver on promises to generate a broad based Federal Action Plan. It begins with the keynote address and a review of workshop objectives and methodology. Foreign experts, survey analysts and local analysts give brief presentations.

Working Group Sessions. In small groups (in principle less than 15 participants) the substantive analysis and consensus building occur. Each group is assigned a trained chairman and facilitator to ensure that each group member is given ample opportunity to participate in the discussions. Utilizing the material assembled (from survey results to presentation) the groups' task is to examine the causes and results of corruption and/ or lack of integrity, and to identify actions to address these problems.

Group Presenters' Reports. The designated group presenters report during a plenary session, where panellists or other participants give feedback.

Final Plenary Session. The final plenary session is a forum for publicly presenting findings of the workshop and the Action Plan.

Process Objectives of the Workshop

The process objectives need to be clearly communicated to office bearers as well as participants well in advance of the workshop, and need to be confirmed at the start of and during the workshop.

In a Federal Integrity Meeting for Chief Judges, the objectives will normally be threefold:

to initiate a sharing and learning process;

to create a partnership between participants from different stakeholder groups, the immediate product of which would be an outline document adopted by consensus which could serve as a focus for informed public discussion and political debate in the run-up to the elections; and

to create an environment where new roles could be tested and practiced, in a fashion that may be replicated in a society generally.

These objectives were communicated to office bearers through written communication two weeks before the workshop and meetings were held with officer bearers to "check-in" during the workshop. To ensure that the above process objectives were met, a process was designed for the Federal Integrity Workshop to focus on

creating a partnership,

fostering participation, and

managing group energy.

Creating a Partnership

One of the Workshop's focuses is to create partnerships between country participants, e.g. representatives of the government, media, religious and private sector groups, and NGOs.

Partnerships can, however, be created between various other stakeholders. For example, participants may wish to organize workshops involving donors as well.

The design of the Workshop on Federal Integrity has to allow ample opportunity for court users to state their views, and to have their voices heard. It is important to ensure that resource people, especially from outside the country, not impose their views on country participants and *vice versa*, but that a climate of synergy be created.

In order to achieve partnership, several options might be considered for the workshop process. One is to have certain participants act as observers only: this option would imply that these participants would not participate in small group discussions, but only listen and comment on group feedback by country participants during plenary sessions. Another is to have certain participants separately discuss the same topic during small group sessions, and then to compare their findings during plenary sessions. This last option ensures mutual understanding, equal participation and cooperation between participants.

It should be noted that, in selecting this option, facilitators have to ensure that a balanced discussion took place and a climate of synergy was created. This means a bigger responsibility on the facilitators than would be the case if the other options is chosen. In this instance the facilitators' task was mainly to focus on *process*. To ensure the content output consolidators need to support the facilitator.

Participation

The principle of active participation ensures that participants not only passively *listen* to inputs from speakers, but that they have the opportunity to ask questions, *express* their viewpoints, and actively *participate in discussions* aimed at addressing the workshop objectives. This ensures better understanding, ownership of information and heightened awareness. Several design considerations ensures this outcome. There should be no more than 15 people per small group, and facilitators have to ensure that all group members had the opportunity to speak. Facilitators prevented participants from dominating discussions. The aim of deliberations is not only to achieve consensus, but also to achieve an understanding of alternative viewpoints, even those that are conflicting.

Managing Group Energy

Every group has its own dynamics, which can be either detrimental or conducive to achieving the group's objectives. Facilitators should be able to identify the energy levels within a group and should be able to manage them carefully. The facilitators should be prepared in detail regarding various group energy scenarios and possible countermeasures should be discussed.

Process Options to Cover the Workshop Theme

To ensure sufficient coverage of the workshop theme the following options should be considered:

- ◆ to propose separate topics and let participants select those they wanted to address
- ◆ to assign different issues or aspects of the same topic to different groups and let them share their findings in a feedback session, in order to prevent duplication
- ◆ to ask each group to discuss the same topic in the light of the pre-group inputs and their own needs, and to assess the degree of consensus, disagreement or synergy during the feedback sessions.

Content Component

Depending on the overall corruption problem the Workshop wants to address they are mainly two types of meetings:

Federal Integrity Workshop (FIW)

Participants of a FIW are invited to discuss how to strengthen judicial integrity, access to justice and the quality, cost and swiftness of the Judiciary at the Federal level. The FIW model emphasizes the production of tangible outputs, including an agreement on a comprehensive assessment methodology that express the consensus of the workshop on the issue of corruption and a Federal Integrity Action Plan by the end of the workshop.

State Integrity Meeting(SIW)

Participants of a SIW are invited to discuss how to strengthen judicial integrity, access to justice and the quality, cost and swiftness of the Judiciary at the state level. The FSW model emphasizes the production of tangible outputs, that express the consensus of the workshop on the issue of corruption and a by the end of the workshop.

Specific Court Integrity Meeting(CIW))

Participants of a CIW are invited together with court users how to strengthen judicial integrity, access to justice and the quality, cost and swiftness of the court. The F model emphasizes the production of tangible outputs, that express the consensus of the workshop on the issue of corruption and a State Integrity Action Plan by the end of the workshop.

It is of crucial importance to ensure that the workshop theme and specific topics are relevant to the needs of the participants. Presenters of papers or panelists should be briefed beforehand on what is expected from them. The organizers may decide to ask presenters to do any of the following:

- ◆ give a general introduction to the workshop theme
- ◆ share research information
- ◆ present (theoretical) models
- ◆ present examples of best practice and results
- ◆ present key issues and formulate trigger questions to stimulate discussion amongst participants.

Workshop Topics, Key Issues and Elements

To ensure that the content was relevant to the theme of improving integrity, six topics were chosen for the Workshop:

Facilitators should be given the option to formulate questions to introduce these themes during the small-group discussions of each topic where appropriate. Examples may be:

- ◆ Public perception of the judicial system.
- ◆ Indicators of corruption in the judicial system.
- ◆ Causes of corruption in the judicial system.
- ◆ Developing a concept of judicial accountability.
- ◆ Remedial action.

A few key issues may be relevant to all these topics. Facilitators should be given the option to formulate questions to introduce these themes during the small-group discussions of each topic where appropriate:

- ◆ consider the needs of building a workable judicial integrity system;
- ◆ consider how society as a whole might participate in continuing debate on these issues and work with like-minded political players in a creative and constructive fashion;

- ◆ make specific recommendations for action and assignment of responsibility for improving the judicial integrity system.
- ◆ address the issue of leadership: What kind of leadership is required? Do we have the right kind of leadership? Do we train leaders appropriately? What can be done to fill the leadership vacuum?
- ◆ address result orientation: identify best practice guidelines that could or should be followed. What kind of results are expected?
- ◆ foster partnership, action, learning and participation: a partnership between the types of organizations represented at the Workshop. How can partnership be established? What does this require from within each of the types of organizations?
- ◆ create political will and commitment: does the political will and commitment for change exist? Can it be cultivated?

Result Orientation

It is important to prompt participants to devise solutions and action plans during a workshop, where appropriate. This generates pro-active energy and a sense of achievement during the workshop. Facilitators for the Federal Integrity Workshop should be briefed to ask groups to consider the implications of discussions for an integrity action plan, to ensure a result orientation throughout the workshop. Facilitators had the option to prompt their groups to:

- ◆ identify WHAT: the key policy instruments and programmes that could potentially affect the Judicial Integrity System.
- ◆ consider HOW: how such policy instruments and programmes could best be designed and implemented to enhance integrity.
- ◆ identify organizational CONSTRAINTS: review constraints internal and external to the organization on effectiveness and efficiency, including coordination between parts of the government and between the various other actors
- ◆ focus on a sharing of the LEARNING PROCESS, i.e. of what does work and what does not work within organizations, and among organizations in other countries/regions

Content Input

Careful consideration should be given to the written and oral input for a workshop (pre-workshop documentation and copies of papers to be presented, and presentations during the workshop). These inputs serve to orientate and sensitize participants for participation during the workshop, and should also serve for reference after the workshop. Possible inputs:

background papers and other documents handed out on the first day (ideally, such documents should be sent to participants well in advance of the workshop)

short remarks in plenary by the authors of the papers

general input from a number of speakers on the first morning of the workshop

trigger questions formulated by the facilitators for each of the small group discussions.

Such inputs should be used as guidelines during a workshop. Another option is to have a panel of presenters, chaired by someone knowledgeable in the field. Trigger questions can then be formulated by the chair as well as the presenters. Facilitators should encourage participants in group sessions to critically evaluate these inputs and to raise fresh and new ideas.

Content Output

The content output of a workshop usually consists of the following:

- ◆ a record of the proceedings, including a record of the small group deliberations and subsequent discussions in plenary sessions
- ◆ other plenary deliberations, including summaries provided by chairpersons after each session, and suggested follow-up actions, conclusions and recommendations
- ◆ the texts of papers presented during the workshop (either the full texts, extracts from the texts or summaries of the texts), edited for uniformity and consistency.

It is necessary for the workshop office bearers such as facilitators and consolidators to be involved in the production of the proceedings at least in regard to the accuracy of the content of the initial drafts.

Office Bearers and Responsibilities

To ensure that the objectives of a workshop are met, one person cannot handle the design and implementation of such a Workshop: a well working team of competent people needs to be formed. The team members or office bearers should be properly briefed in writing ahead of time and should ideally get together two days before the workshop to share ideas, clarify roles, agree on content and process objectives, and clarify the content of topics and key issues. They should also agree on the format of small group and plenary findings to be included in the proceedings. Below is described some typical roles: not all were used at the Federal Integrity Workshop.

Workshop Management Group

Members of this group are chosen to represent all the stakeholders, because of their specific skills and because of their availability and commitment to the success of the workshop. The Workshop Management Group has overall responsibility for designing the workshop process, its monitoring and evaluation, and the production of the record of the workshop proceedings. Members of this group need to be available well in advance of the workshop to ensure proper planning and also after the workshop to oversee delivery of results.

Roving Facilitators

Roving facilitators are appointed because of their skills in workshop design and facilitation. They need to be available well ahead of time to liaise with the Management Group about the process and content objectives of the workshop. Normally, the tasks of roving facilitators are to:

- ◆ assist with the design and planning of the overall process
- ◆ coordinate the overall process
- ◆ select and brief (and train when necessary) facilitators and consolidators of small groups
- ◆ visit small groups at intervals and support group facilitators where necessary
- ◆ manage time during the workshop
- ◆ ensure sharing across groups, without imposing one group's mode of operation upon that of another
- ◆ help out in problem situations

- ◆ coordinate the consolidation of material generated by small groups and plenary sessions
- ◆ coordinate between panels, working groups and the secretarial teams
- ◆ facilitate meetings of facilitators
- ◆ provide feedback on every day's proceedings to the Workshop Management Group.

Session Chairpersons

A chairperson is selected for his or her ability to handle large audiences, and conceptual ability in summarising lengthy discussions. Chairpersons must:

- ◆ chair plenary sessions
- ◆ lead discussion sessions, and ensure that discussions remain focused
- ◆ manage the time of the plenary in a strict but not offending way
- ◆ summarise discussions at the end of each session
- ◆ pose questions to be addressed by working groups
- ◆ approve the typed record of the plenary sessions
- ◆ provide feedback on every day's proceedings to the Workshop Management Group.

One chairperson can be chosen to preside over the entire workshop, or the responsibility can shift by day or by session among several people.

Small Group Facilitators

These facilitators are chosen because of their ability to stimulate discussion in small groups, because of their process skills and good interpersonal relations. They are strict and focused in regard to the process, but flexible in terms of the content of the topic. It is often better to have a facilitator who is not a specialist on the topic to prevent bias and to prevent specific viewpoints from being imposed upon group discussions. Facilitators should be creative and able to understand and summarize the viewpoints of participants.

The tasks of the group facilitators are to:

- ◆ manage the *process* in the group discussions
- ◆ ensure balanced participation in the deliberations
- ◆ briefly outline the topic of the session and the questions, issues and themes to be addressed
- ◆ facilitate a short process to identify all the issues which members wish to raise, and then allocate time to each issue
- ◆ call for discussion: first, points of clarification; second, points of substance
- ◆ ensure that all group members get a chance to speak, and limit contributions to one to two minutes
- ◆ start off by asking group members to briefly introduce themselves, to let everybody feel at ease
- ◆ ask those who do not wish to speak to submit their contributions in writing to the group consolidator
- ◆ assist with the formulation of issues, while not influencing the content
- ◆ integrate different views and find common ground, but also allow participants to disagree (synergy)

- ◆ briefly summarise each contribution made to cross-check that it was properly understood
- ◆ manage the energy of the group discussion
- ◆ assist the group consolidator as well as the presenter to capture the essence of the points made on flip-charts; ensure that the points captured are written down in a clear format which can easily be understood at a later stage, and will not cause confusion
- ◆ provide feedback on every day's proceedings to the Workshop Management Group.
- ◆ facilitate the election of the presenter

The tasks of facilitators could well be renegotiated between facilitators and participants.

Working Group Consolidators

Consolidators are chosen because of their knowledge and understanding of the workshop theme and their conceptual ability to summarise various standpoints in crisp and clear language. They play an important role in ensuring that a high quality content output is delivered.

The tasks of the working group consolidators are to:

- ◆ manage the focus on *content* during the group discussion
- ◆ keep a check on the time allocated to the discussion of identified issues during the working group sessions
- ◆ capture the deliberations and the issues raised on flip charts and to bring conceptual clarity, without imposing their own views
- ◆ encourage those that have not contributed verbally to the working group proceedings to contribute their views in writing, and to collate and capture these views as part of the group deliberations
- ◆ assist the group presenter in preparing the group feedback to the plenary session
- ◆ cross-check and sign off, in collaboration with the group facilitator, the recorded and edited deliberations of each group
- ◆ assist the group facilitator and the workshop management team in any way necessary.
- ◆ provide feedback on every day's proceedings to the Workshop Management Group.

Working Group Presenters

Each working group can appoint its own person to present the group's deliberations to plenary.

The tasks of the presenters are to:

- ◆ present the group's response in a logical and clear way during the plenary session
- ◆ field and pose questions during plenary sessions.

Proceedings Secretariat

It is often advisable in a workshop that is strongly results-oriented, and because of an urgency for participants to commence with follow-up actions, to hand participants a draft copy of the draft proceedings, action plan, integrity pledge and the press release before they depart.

It is important that members of the proceedings secretariat are dedicated workers, willing to work long hours, and that at least one member of the proceedings secretariat has a working knowledge of the topic. Another important aspect is that one member should be an expert

word processor operator, who can turn the text into a presentable format. The proceedings secretariat should be supported by reliable, high-quality equipment in the form of computers, printers and copier machines which are capable of producing high quality as well as high volumes.

It is also useful if this team is able to provide:

- ◆ unedited, near verbatim transcripts of working group report-backs to plenary, and of plenary discussion sessions, within the hour
- ◆ edited, consolidated versions of each day's deliberations, approved by consolidators and facilitators, within 24 hours.

Workshop Secretariat

The task of the workshop secretariat is to take care of all administrative and logistical arrangements. Any inquiries about matters such as transport, air tickets, daily allowances, or administrative requirements such as copying of papers and stationary requirements are dealt with by the workshop secretariat. This team must be supported by reliable and high-quality equipment. Members of the secretariat are required to work long hours and should be efficient and friendly people, willing to assist in any way they can.

Media Liaison

It is important to appoint a media liaison person who understands how to deal with the press. If necessary, such a person can be supported by a small team, members of which understand the workshop theme well enough to be able to support the writing of press releases and liaison with the media.

It is a good idea to have a "press board" where newspaper clippings on the event can be displayed on a daily basis.

Workshop Programme

We have discussed the objectives for process and content, and the roles of those who should ensure that the objectives are achieved. The remaining question is how to bring all of these together in a workshop programme? The following outline is a typical design, and also the one which was followed for the Workshop on Judicial Integrity. Of course, there can be variations on the design, but for the purposes of this document it is sufficient to discuss this outline only, which assumes panelists are involved.

First Plenary Session: Orientation and Introduction

The first plenary session should start with an orientation of participants in regard to the process and content objectives of the workshop. A keynote address and other introductory papers should set the scene for the workshop. A competent chairperson of the Workshop fields questions and answers, and summarises the discussions.

Plenary Introduction to Small Working Group Discussions

The chairperson should introduce the topic and the panelists, and refer to the relevant background material. Thereafter, panelists may deliver short presentations. The key issues from these presentations should briefly be summarised by the chairperson, who should also pose trigger questions flowing from the presentations by panelists for the groups to address during the group sessions.

No discussion of topics should be allowed at this stage, only questions for clarification. Discussion should be reserved for small groups. The chairperson should plan the session with the panelist to ensure that time constraints are respected, to receive trigger questions from

them and to ensure that their inputs serve the purpose of orientating the participants for meaningful discussions in small groups.

Working Group Sessions

It is in the small groups where most of the interaction takes place. Well-trained and competent working group chairpersons, facilitators and consolidators should ensure that every participant gets a chance to make an input, to understand the topic and critical issues and are motivated to take appropriate action where required. The setting is much more informal than in the plenary session and more interpersonal dialogue can take place.

There are various options for organizing small groups:

- ◆ a new group could be formed for every topic
- ◆ participants could form temporary new groups of short duration (called rainbow groups) but return to their original group after a specific task has been achieved
- ◆ participants could stay in the same group throughout the workshop.

Working group office bearers consists of:

- ◆ a chairperson
- ◆ an appointed group *facilitator/consolidator* (to capture the deliberations and the issues raised on flip chart, to help the chairperson keep check on time allocated, and to assist the group presenter in preparing for plenary session)
- ◆ a *presenter* elected by the group halfway during the group session (to present the group's deliberations to the plenary session and field and pose questions)

The groups could refer to any of the available material and trigger questions as a starting point to their deliberations. When necessary, groups could be asked to address key questions and issues in a different order to ensure that all the aspects of a topic are covered.

Groups should identify their options and choices in relation to the issues identified. They do not have to necessarily reach consensus on all issues, but points of agreement as well as disagreement need to be noted.

Chairpersons/facilitators should, however, ensure that points of disagreement are not the result of misunderstanding and that participants have at least a good understanding of their alternative viewpoints. Areas of agreement should be clearly noted because they indicate common ground which is useful for further pro-active action. Unresolved issues could be put to plenary and panelists for comment and resolution.

The chairperson and facilitator must ensure that the full capacity of the group is utilized in order to add value to the topic under discussion.

Plenary Report-Back by Groups

Groups should report back (5 to 10 minutes each) to plenary after each group session, in a different order each day. Different presenters may be selected by the groups for different sessions. Plenary discussion only takes place after all groups have presented their deliberations. This is where panelists' input is of crucial importance. Panelists should answer questions, comment on the feedback and add specialist value to the deliberations. The chairperson wraps up after the discussion session, summarizes the issues and, where appropriate, endeavors to identify follow-up actions which need to be taken.

Final Plenary Session

During the final plenary a summary of findings should be presented. To ensure participation, the workshop process and content could be evaluated by participants in small groups or by

means of a questionnaire. To ensure that proactive energy and a sense of achievement is maintained, participants should share their ideas for their *own* follow-up as well as suggestions for a follow-up of the total workshop initiative.

Conclusion

As noted earlier, the workshop design described here represents only one of the various ways in which a workshop can be organized. There is much more information to share and participants are invited to let the Management Group know about their own experiences in organizing workshops.

If any further guidelines and advice or training for organizers and facilitators is needed, participants should to contact the Workshop Management Group.

Preconditions and risks

The greatest challenges of any action planning or integrity workshop are:

- ◆ Broad based representation by as many stakeholder groups a possible
- ◆ Come up with a realistic and credible action plan
- ◆ Assure the necessary follow up and implementation of the agreed action plan
- ◆ However they are several risks involved with the organization and conduct of Integrity Strategy Meetings and Action Planning Workshops:
 - ◆ First, a good balance between content and process must be maintained. Too much emphasis on process dilutes the content. On the other hand, too much emphasis on content constrains participation and ownership of content.
 - ◆ Second, the group energy, particularly in the small working groups needs to monitored and managed carefully.
 - ◆ no energy: counter this by asking stimulating questions
 - ◆ wasted energy: counter this by ensuring that discussions are focused on relevant and key issues; the consolidator could be of assistance in this regard
 - ◆ reactive energy: this energy is generated when participants are in either a confrontational mode or focusing on problems; the facilitator should mediate between conflicting parties to bring better understanding and acceptance of differences; a problem orientation is prevented through always asking for solutions to problems and not focusing only on problems
 - ◆ proactive energy: pro-active energy is generated through focus on solutions, results, best practices and actions. It motivates participants to take initiative in applying their knowledge
 - ◆ synergy: synergy is generated through balancing consensus and conflict, and agreement and disagreement between participants; if there is too much consensus the facilitator should probe alternative viewpoints, on the other hand if there is too much disagreement the facilitator should try to have people reach consensus. Synergy generates better understanding between stakeholders, creativity, and new and refined ideas and viewpoints.

Another risk involved is the creation of working groups to big. To ensure the value of small group discussion, the groups should not consist of more than 15 participants. Research has shown that when a group consists of more than 15 participants, the group dynamics change to such an extent that it becomes difficult to achieve the benefits of interpersonal contact. In addition, the facilitators' style needs to change drastically in order to cope with bigger groups.

I. Federal Integrity Meeting for Chief Judges, Survey to be filled in by all participants

to facilitate priority setting for the comprehensive assessment of the quality and timeliness of the delivery of justice within the three pilot States

Process Guidance

Selecting a measure to be implemented in your jurisdiction it is important to ask yourself the following questions:

To what extent:

- ◆ Are you in control of implementation of the measure
- ◆ Do you have the necessary funds to implement the measure
- ◆ Will this measure have impact on the key problems
- ◆ Will you show results within the next 18 months
- ◆ High priority issue

Survey to facilitate priority setting

Please indicate your status in the workshop:

- ☐ **Chief Judge**
- ☐ **Judge (please indicate court)** _____
- ☐ **Others**

Question 1;

Out of the Key Problem Areas identified by the Chief Justice Leadership Group, which would rate as a priority for your State:

	High Priority			Low Priority	
	5	4	3	2	1
1. Generation of reliable court statistics	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Adequate and fair remuneration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Credible and effective Complaints System	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Merit based judicial appointments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Enforcement of Code of Conduct	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Court Delays	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Unbiased Case Assignment System	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Sentencing Guidelines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Case Load Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Public Confidence in the Judiciary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Strengthened Social Control Systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Judicial Training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Case Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Abuses of procedural discretion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Abuses of substantive discretion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Increased judicial control over delays created by litigants lawyers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 2;

Rank the levels of, in your opinion, corrupt practices within the criminal justice system outside of your court among:

Judges

- Very High ☐
- High ☐
- Low ☐
- Very Low ☐

Court Administrators

- Very High ☐
- High ☐
- Low ☐
- Very Low ☐

Prosecutors

- Very High ☐
- High ☐
- Low ☐
- Very Low ☐

Police

- Very High ☐
- High ☐
- Low ☐
- Very Low ☐

Prison Personnel

- Very High ☐
- High ☐
- Low ☐
- Very Low ☐

Lawyers

- Very High ☐
- High ☐
- Low ☐
- Very Low ☐

Question 3;

Please state the three most successful measures that has been implemented in your state to increase the quality and timeliness of the delivery of justice.

1. _____

2. _____

3. _____

Question 4;

Please state the three most important constraints you face in your state in the delivery of justice.

1. _____

2. _____

3. _____

Questions 5;

State what in your opinion are the three most important improvements needed in the criminal justice system outside your judicial domain

1. _____

2. _____

3. _____

Question 6;

State what in your opinion are the three most important improvements needed in the socio-economic and/or political environment.

1. _____

2. _____

3. _____

J. Agenda of the First Federal Integrity Meeting for Chief Judges

held jointly by the

Chief Justice of the Federal Republic of Nigeria

and the

United Nations Office for Drug Control and Crime Prevention (UNODCCP)

Sheraton, Abuja, October 26th –27th , 2001

DAY 1: Friday October 26th 2001

- 09.30-10.00 Registration
- 10.00-11.00 Opening Session,
Welcome Remarks:
by Mr. Paul Salay, UN-ODCCP Country Representative
by the Hon. Chief Ige Bola, Attorney-General and Minister of Justice of the Federation
Key Note Address by the Hon. Justice M.L. Uwais, Chief Justice of the Federal Republic of Nigeria
- 11.00-11.30 Coffee/Tea Break
- 11.30-13.00 **First Plenary Session**, Chairperson Hon. Justice M.L. Uwais, Chief Justice of the Federal Republic of Nigeria.
Challenges facing the Commission and the Role of the Judicial Integrity Project by Hon Justice M.M.A. Akanbi Chairman of the Independent Corruption Practices and Related Offences Commission (confirmed)
Balance Judicial Independence and Judicial Accountability by Mr. Jeremy Pope, Executive Director Transparency International
- General Plenary Discussion**
- 13.00-15.00 Lunch
- 15.00-16.00 **Second Plenary Session**, Chaired by Hon. Justice M.L. Uwais,
Background to the Strengthening Judicial Integrity Initiative – The International Judicial Leadership Group by Dr. Petter Langseth, Programme Manager, UNODCCP-Global Programme against Corruption
The Pilot Projects and the Comprehensive Assessment Methodology by Prof. Edgardo Buscaglia, UNODCCP-Global Programme against Corruption (confirmed)
- General Plenary Discussion**
- 16.00-16.30 Coffee/Tea Break
- 16.30- 18.00 **Resumed Second Plenary Session**, Chaired by Hon. Justice M.L. Uwais,
General Plenary Discussion
- 18.00 Closing of the first day

DAY 2: Saturday October 27th, 2001

09.00-12.30 **Third Plenary Session** , Hon Justice M.M.A. Akanbi, Chairman of the the Independent Corruption Practices and Related Offences Commission

Presentation of the findings of the participant survey regarding the focus of the assessment the priorities to be implemented within the three pilot states by the Conference Secretariat.

Small Group Discussion

- | | | |
|-----------------|---------------------------------------|--------------|
| Group 1: | Topics as decided by the participants | (priority 1) |
| Group 2: | Topics as decided by the participants | (priority 2) |
| Group 3: | Topics as decided by the participants | (priority 3) |
| Group 4: | Topics as decided by the participants | (priority 4) |

Each group will be assigned one priority area identified by the participant survey for further detailed discussion regarding the problem, its causes and possible solutions. (Terms of Reference will be available for each group and each group will have a chairperson, a rapporteur and a facilitator).

Expected outcome of the small groups:

Identify the priority areas to be addressed by the comprehensive assessment within the pilot states.

Identify some of the potential priority areas within the judiciary at the state level on which the technical assistance measures could focus

Develop a preliminary Draft Action Implementation Matrix establishing a time frame, the institutional responsibilities, the resources needed and the monitoring of the implementation

(The final identification of the priority areas as well as the actions to be taken will only be possible once the comprehensive assessment has been completed)

12.30-14.00 Lunch

14.00-16.00 **Fourth Plenary Session**

Presentation of the findings from the small groups by the group-rapporteurs (10 minutes per group)

General Plenary discussion

16.00-1630 Coffee/ Tea Break

16.30-18.00 **Closing Session**

Presentation of the Draft National Anti-Corruption Action Plan Implementation Matrix including a preliminary Implementation Plan for three pilot states by the Conference Secretariat.

Closing Statement and issuing of the Communiqué by the Hon. Justice M.L. Uwais, Chief Justice of the Federation.

K. List of Participants

1. Hon. Justice M.L. Uwais, GCON, CJN, Chief Justice of Nigeria, Supreme Court of Nigeria, Abuja.
2. Hon. Justice R.N. Ukeje, Federal High Court 24 Oyinkan Abayomi, Lagos, 01-2671260
3. Hon. Justice Dahiru Saleh, CJ, Chief Judge, High Court of Justice, Federal Capital Territory, Abuja Tel. 5232353
4. Hon. Justice K. O. Amah, Chief Judge, High Court of Justice, Abia State.
5. Hon. Justice B.S. Bansi, The Chief Judge, High Court of Justice, Yola, Adamawa State, Tel 075-625511
6. Hon. Justice E.D.U. Idiong, Chief Judge, High Court of Justice, Akwa-Ibom State.
7. Hon. Justice G. U. Ononiba, The Chief Judge, High Court of Justice, Anambra State.
8. Hon. Justice S.S. Darazo, The Chief Judge, High Court of Justice, Bauchi State.
9. Hon. Justice K.D. Ungburu, The Chief Judge High Court of Justice, Bayelsa State, Tel. 089-490869
10. Hon. Justice T.U.F. Puusu, The Chief Judge, High Court of Justice, Benue State.
11. The Chief Judge, High Court of Justice, Borno State.
12. Hon. Justice D. N. Eyamba-Idem The Chief Judge, High Court of Justice Cross River State
13. Hon. Justice M. A. Okungbowa, The Chief Judge, High Court of Justice, Delta State.
14. Hon. Justice P.O. Elechi, The Chief Judge, High Court of Justice, Ebonyi State.
15. Hon. Justice Constance Momoh, The Chief Judge, High Court of Justice, Edo State.
16. Hon. Justice J.A. Ajakaiye, The Chief Judge, High Court of Justice, Ekiti State.
17. Hon. Justice J.U.M. Ugwu, The Chief Judge, High Court of Justice, Enugu State.
18. Hon. Justice H. J. Heman, The Chief Judge, High Court of Justice, Gombe State.
19. Hon. Justice L. C. Alinnor, The Chief Judge, High Court of Justice, Imo State.
20. Hon. Justice T. Abubakar, The Chief Judge, High Court of Justice, Jigawa State.
21. Hon. Justice R. H. Cudjoe, The Chief Judge, High Court of Justice, Kaduna State.
22. Hon. Justice Sanusi C Yusuf, The Chief Judge, High Court of Justice, Kano State. Tel. 064-662123
23. Hon. Justice A. Mahuta, The Chief Judge, High Court of Justice, Katsina State.
24. Hon. Justice Ibrahim Umar, The Chief Judge High Court of Justice, Kebbi State. Tel. 068-3200298
25. Hon. Justice A.U. Eri, The Chief Judge, High Court of Justice, Lokoya, Kogi State. Tel. 221747
26. Hon. Justice T. A. Oyeyipe, The Chief Judge, High Court of Justice, Kwara State.
27. Hon. Justice Sotuminu, The Chief Judge, High Court of Justice, Lagos State.
28. Hon. Justice A.Y. Ubangari, The Chief Judge, High Court of Justice, Nassarawa State. Tel 047-20058
29. Hon. Justice J.N. Ndajiwo, The Chief Judge, High Court of Justice, Niger State.
30. Hon. Justice Falodun, The Chief Judge, High Court of Justice, Ondo State.

31. Hon. Justice Oluborode, The Chief Judge, High Court of Justice, Osun State.
 32. Hon. Justice I.O. Olakanmi, The Chief Judge, High Court of Justice, Ibadan, Oyo State.
Tel. 02-2315318/ 2311655
 33. Hon. Justice U. Uloko, The Chief Judge, High Court of Justice, Plateau State.
 34. Hon. Justice D.N. Eyamba-Idem, The Chief Judge, High Court of Justice, Rivers State.
 35. Hon. Justice Aisha S Dahiru, The Chief Judge, High Court of Justice, Sokoto State.
 36. Hon. Justice A. Aliyu, The Chief Judge, High Court of Justice, Taraba State.
 37. Hon. Justice B.S. Guyba, The Chief Judge, High Court of Justice, Bamatura, Yobe
Tel. 076-522214
 38. Ahmadu Ibrahim Rufai, Grand Kadi, Bauchi State, Sharia Court of Appeal, 027-342429
 39. Mohammed Z. Musa, Grand Kadi, Sharia Court of Appeal, Kebbi State, 068-325700
 40. G. A. Sha, President, Plateau StatCustomary Court of Appeal, 073-455364
 41. Chief Bola Ige, SAN, The Hon. Attorney-General of the Federation /
Minister of Justice, Federal Ministry of Justice, 10th Floor, Federal Secretariat, Abuja.
 42. Abba B. Mohammed, Legal Adviser Ministry of Police Affairs, Abuja.
Tel: 09-5234780
 43. Baba Ahmadu, Assistant Inspector-General of Police, Nigeria Police Force Head
quarters, Abuja Tel: 09-6700109
 44. Tanko Ashang, Assistant Legal Adviser, Nigeria Customs Service, Abuja.
 45. S.O. Badeji, Comptroller of Customs, Nigeria Customs Service, Abuja.
 47. Comptroller O.O. Eneh, Nigeria Customs Service, Abuja.
 48. Comptroller S.O. Akanji, Comptroller of Customs, Nigerian Custom Services, Abuja,
Tel 09-5236385
 49. Musa Aboki, S.A. to Chairman, Independent Anti-Corruption Commission, Abuja
 50. Prof. G. Nzongola, Senior Advisor, UNDP, Nigeria.
 51. Sam Unom, Assistant Governance Advisor, DFID, Abuja.
 52. Mike Stevens, Law Specialist, World Bank, Washington
 53. Dr. Petter Langseth, Programme Manager, Global Programme Against Corruption,
UN Office for Drug Control & Crime Prevention, Vienna, Austria.
 54. Dr. Edgardo Buscaglia, UN Office for Drug Control & Crime Prevention Vienna, Ausria.
Oliver Stolpe, UN Office for Drug Control & Crime Prevention, Vienna, Austria
 55. Mr. Paul Salay, Country Representative UN Office for Drug Control & Crime
Prevention, Nigeria.
 56. Bisi Arije, UN Office for Drug Control & Crime Prevention, Nigeria.
 57. Steve Nwaoboli, UN Office for Drug Control & Crime Prevention, Nigeria
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